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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th September 1955

**S.R.O. 2060.**—Whereas the election of Pandit Srniwas, son of Pt. Tribeni Sahai, resident of Mohalla Chaubai, Budaun, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Budaun North constituency of that Assembly, has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mohammad Asrar Ahmad, son of Shri M. Ghulam Mohammad, Civil Lines, Budaun;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUCKNOW

PRESENT:

Sri Raghunandan Saran (Retired District Judge)—*Chairman*.

Sri A. Sanyal—*Advocate Member*.

Sri M. U. Faruqi (Retired District Judge)—*Judicial Member*.

ELECTION PETITION NO. 13 OF 1953

Petition under Sections 80 and 81 of the Representation of the People Act, 1951. (Budaun North Constituency of the U.P. Legislative Assembly)

Sri Mohammad Asrar Ahmad, aged about 44 years, son of M. Ghulam Mohammad, resident of Civil Lines, Budaun—*Petitioner*.

*Versus*

1. Pt. Sri Niwas, son of Pt. Tribeni Sahai, resident of Mohalla Chaubai, Budaun.
2. Sri Nihaluddin of Sri Riazuddin, resident of Mohalla Farshori Tola, Budaun.
3. Sri Pearey Lal, son of Bakshi Ram, resident of Birahampur, Budaun.
4. Sri Haran Saran Verma, son of Sri Magan Behari Lal, resident of Patyali Sarai, Budaun.
5. Srimati Zohra Khatoon, wife of Mohammad Asrar Ahmad, resident of Civil Lines, Budaun.
6. Mohammad Intizar Ahmad, son of Mohammad Gulam Mohammad, resident of Civil Lines, Budaun—*Respondents*.

## JUDGMENT

PER R. SARAM AND M. U. FARUQI

This is an election petition under Sections 80 and 81 of the Representation of the People Act, 1951, challenging an election to the U.P. Legislative Assembly in the Buduan North constituency. The election in question was a bye-election and the date of polling was 3rd May 1953. The duly nominated candidates at this election were the petitioner and the respondents Nos. 1 to 6; however, the respondents Nos. 5 and 6, who are respectively the wife and brother of the petitioner, withdrew their candidature with the result that the contest was between the petitioner and the respondents Nos. 1 to 4 only. The petitioner Sri Mohammad Asrar Ahmad stood on the Congress ticket and secured 9,396 votes; the respondent No. 1, Pt. Sri Niwas, was an independent candidate who secured 11,928 votes; the respondent No. 2, Sri Nihal Uddin, was set up by the Praja-Socialist Party and he secured 6,525 votes; the respondents Nos. 3 and 4, Sri Pearey Lal and Sri Har Saran Verma, were independent candidates who got respectively 1,269 and 713 votes. The counting of votes took place on 5th May 1953, and the result of the election declaring the respondent No. 1 as the returned candidate was published in the Government Gazette of the Uttar Pradesh, dated 12th May 1953, after which the several candidates filed their returns of the election expenses.

2. The election petition was presented by Sri Asrar Ahmad on 18th July 1953 challenging the election in question on various grounds and praying for a declaration that the election of the respondent No. 1 is void and that he himself has been duly elected. The grounds taken are the commission of several corrupt practices on behalf of the respondent No. 1, viz. a systematic appeal to Hindu voters to vote for the respondent No. 1 and to refrain from voting for the petitioner on the ground of religion, undue influence by inducing a belief in the Hindu electors that by voting for the petitioner they would promote cow-slaughter and would thereby commit a sin and go to hell the removal of ballot papers from the polling stations during polling hours, personation at the polling, the hiring and procuring of vehicles for the conveyance of electors to the polling stations, the obtaining of assistance from persons serving under the U.P. Government, the incurring of expenses in contravention of the law and the making of the return of election expenses which is false in material particulars. It is alleged that these corrupt practices were committed by the respondent No. 1 and his agents and by other persons with the connivance of the respondent No. 1 and his agents, that the election of the respondent No. 1 has been procured and induced by these corrupt practices and that the result of the election has been materially affected by them and but for them the petitioner would have got the majority of votes. Also the illegal practice of issuing a leaflet not bearing on its face the name and address of the printer and publisher is alleged. Lastly, it is alleged that several irregularities were committed at the election materially affecting the result of the election. These allegations are contained in paras. 4 to 8 of the petition, and their particulars are given in lists (A) to (I) appended to the petition.

3. The election petition is contested by the respondent No. 1, who has filed a written statement denying all these allegations and contending that the election petition should be dismissed. However, he has made no recrimination against the petitioner under Section 97 of the Act. On the pleadings of the parties 19 issues were framed on 31st November 1953; out of them the issues No. 1 and 3 to 6 were on the preliminary points that the election petition and its lists were not properly framed and verified and were vague and indefinite and wanting in material particulars. These five preliminary issues were disposed of by our order, dated 16th February 1954 which is appended to this order as Annexure A; by that order certain portions of the petition and its lists were ordered to be deleted on the ground of vagueness and indefiniteness, and in respect of certain other portions the petitioner was called upon to make clarification or to give further and better particulars and this he has done. We have now to decide the remaining issues Nos. 2 and 7 to 19. In support of his case the petitioner has examined 158 witnesses including himself and proved 101 documents; the respondent No. 1 also has examined 90 witnesses including himself and proved 14 documents in support of his own case.

4. The issues calling for determination are as follows:—

- (2) Whether the relief prayed for by the petitioner that respondent No. 1 be disqualified is contrary to the provisions of Section 84 of the Representation of the People Act, 1951, and cannot be granted?
- (7) Whether there was systematic appeal to vote or refrain from voting on grounds of community and religion for the furtherance of the

prospects of the election of the respondent No. 1 and the majority of votes in favour of respondent No. 1 was secured by such appeal as alleged in para. 4(a) of the petition?

- (8) Whether respondent No. 1 himself or through his agents and workers named in list B committed the corrupt practice of undue influence by inducing or attempting to induce electors to believe that they would become objects of divine displeasure or spiritual censure if they did not vote for the respondent No. 1 and was the free exercise of the electoral right interfered with thereby?
- (9) Whether any ballot papers were removed outside the polling stations during polling hours and whether respondent No. 1 or his agents connived at such removal as alleged in para. 4(c) of the petition? If so, its effect?
- (10) Whether respondent No. 1 himself and through his agents committed the corrupt practice of procuring or abetting or attempting to procure persons to personate at the several polling stations as alleged in para. 4(d) of the petition?
- (11) Whether respondent No. 1 or his agents hired and procured vehicles for the conveyance of electors to polling stations as alleged in para. 4(e) and list E?
- (12) Whether respondent No. 1 or his agents and workers procured and obtained the assistance of persons serving under the U.P. Government for the furtherance of the prospects of the election of respondent No. 1 as set out in para. 4(f) of the petition?
- (13) Whether respondent No. 1 and his agents procured the election of respondent No. 1 by issuing leaflets specified in list G with reference to election which did not bear on the face of them the names and addresses of the printers and publishers thereof? If so, its effect?
- (14) (a) Is the return of election expenses filed by respondent No. 1 not in conformity with the provisions of Rule 112(2) and whether the said return or the declaration verifying the same is false in any material particulars as alleged in para. 6 and list H?
- (b) Whether any expenses actually incurred or deemed to be incurred by respondent No. 1 have not been shown in the return and did the total amount of expenses incurred by respondent No. 1 exceed the prescribed limit?
- (c) Whether respondent No. 1 engaged on payment persons in excess of the number permitted by law?
- (15) Whether any irregularities materially affecting the result of the election as alleged in para. 7 and list I were committed by officials conducting the election and were mandatory provisions prescribed for the conduct of election violated to such an extent that the election could not be deemed an election under the existing law?
- (16) Whether the election of respondent No. 1 was procured and induced by the alleged corrupt practices and irregularities mentioned in the petition or by some of such practices and irregularities and was the result of the election materially affected thereby?
- (17) Whether the petitioner, but for the votes obtained by respondent No. 1 by corrupt and illegal practices and irregularities, would have obtained a majority of valid votes?
- (18) Did respondent No. 1 give instructions to his workers and agents to avoid and prevent commission of corrupt practices and irregularities? If so, its effect?
- (19) What is the proper order to be made under Sections 98 and 99 of the Representation of the People Act, 1951?

5. *Issues Nos. 9 and 10*—These issues relate to the corrupt practices of the removal of ballot papers from polling stations during the polling hours and of personation at the polling and the allegations about them are contained in para. 4(c) and (d) and lists (C) and (D) of the petition. However, at the time of arguments the petitioner's counsel has not pressed these allegations and has given them up and so these issues are found against the petitioner.

6. *Issues Nos. 7 and 8*.—Issue No. 7 relates to the minor corrupt practice of a systematic appeal to the Hindu electors to vote for the respondent No. 1 and not for the petitioner on the ground of religion and the allegations about it are contained in para. 4(a) and list A of the petition. Issue No. 8 relates to the major corrupt practice of undue influence by inducing the Hindu electors to

believe that by voting for the petitioner, a Muslim, they would be committing a sin and would go to hell and the allegations about it are contained in para. 4(b) and list B of the petition. These issues may be taken up together as according to the petitioner's case the respondent's election propaganda used to be made on both these lines simultaneously and the particulars given in list B are the same as those in list (A). The constituency in question comprises of the Budaun city and a large number of villages and the allegation is that in the election days the respondent's workers used to go to the various mohallas of the city and to the various villages for his election propaganda and used to ask the Hindu electors there to vote for the respondent who as a Hindu would protect the Hindu Dharm and the cow and not to vote for the petitioner or the respondent No. 2 who as Muslims would have the cows slaughtered whereby the Hindus would be committing the sin of cow slaughter and would have to go to hell; it is alleged further that in the later days of the election these workers used to distribute copies of the leaflets Ex. P1 and P2 at the time of making this propaganda and that these leaflets contain an appeal to the Hindus to vote for the respondent No. 1 and not for the petitioner or the respondent No. 2 on the ground of religion. The petitioner has examined 158 witnesses in all and out of them about 135 or 140 depose about this propaganda and its effect upon the Hindu electorate in favour of the respondent No. 1 and against the petitioner and the respondent No. 2. About one-third of these witnesses are from the Budaun City and about two-thirds from the rural areas and they depose about this propaganda having been made in the city as well as in the villages. These witnesses are mostly Hindus and only about 18 of them are Muslims; and the Hindu witnesses belong to all castes and communities. They include in their ranks members of legislature, members of Congress Committees, Sarpanches and Panches of Panchayati Adalats, Pradhans of Gramsabhas, members of the District Board and Municipal Commissioners. We have examined their testimony in detail and we see no good reason to disbelieve them on the point of the systematic appeal to the Hindu electors to vote for the respondent No. 1 and not for the petitioner or the respondent No. 2 on the ground of religion and this part of the petitioner's case is supported also by the leaflets Ex. P1 and P2. However, we do not think that these witnesses fully support the petitioner's case of undue influence, and it appears to us that this part of the petitioner's case is rather exaggerated and cannot be believed.

7. Generally the petitioner's witnesses say that the propagandists for the respondent No. 1 used to plead that if the respondent No. 1 was returned he would protect the Hindu religion and the cow but if any of the Muslim candidates was returned he would encourage cow slaughter and thereby the Hindu voters voting for him would be committing a sin and would have to go to hell. However, Gyan Singh, P.W. 9 says that the plea of the propagandists was only that if votes were given to the petitioner he would have the cows slaughtered; the propagandists did not make any mention of sin or hell and it was the electors only who themselves said that they would vote for the respondent only as by voting for Sri Asrar Ahmad they would go to hell. Similarly Parshadi, P.W. 10 says that the plea of the propagandists was only that votes be given to the respondent as he would protect the Hindus and the cow whereas if votes were given to the petitioner he would have the cows slaughtered and he does not say that the propagandists made any mention of sin or hell. Himmat Singh, P.W. 14 also says that the only propaganda was that Hindus should vote for a Hindu or the Hindu Dharm would cease to exist and that it was not proper to vote for the petitioner who would have the cows slaughtered; again there was no mention of any sin or hell. Ishwari, P.W. 35 says that the propaganda was only that the votes should be given to the respondent who would protect the Hindus and there was no mention of sin or hell. Prahladi Lal, P.W. 36 says that the plea of the propagandists was only that the respondent was a Hindu and as such a brother of the voters, there being no mention of sin or hell. Umrao, P.W. 48 either does not say that there was any mention of sin or hell in the election propaganda of the respondent No. 1, and the same is the case with Mewa Ram, P.W. 49, Mohan, P.W. 56 and Lila, P.W. 57 depose about the distribution of leaflets only and not about any propaganda. Punni, P.W. 60 and Kallu, P.W. 65 speaking of the propaganda in respect of the preservation or destruction of the Hindu Dharm and the cows and do not say that there was any mention of sin or hell, and the same is the case with Rameshwar Dayal, P.W. 79, Ram Lal, P.W. 82 either does not say that the propagandists made any mention of sin or hell, and the same is the case with Gulab Singh, P.W. 84, Dori Lal, P.W. 89, Gobind, P.W. 95, Umedi, P.W. 97, Phool Singh, P.W. 111, Sheebaran, P.W. 116, Pearey Singh, P.W. 118, Hemraj, P.W. 119, Bhola, P.W. 127, Brij Pal Singh, P.W. 128, Sri Badan Singh, P.W. 144, Damodar Dass, P.W. 146 and Dattar Baksh P.W. 157. Thus out of the petitioner's witnesses who depose about the election propaganda of the respondent No. 1 as many as two dozen or more do not say that the propagandists made any mention of sin or hell in the course of their propaganda

and in these circumstances it is difficult for us to hold that the respondent's propagandists ever induced or attempted to induce the Hindu electors to believe that by voting for petitioner or the respondent No. 2 in preference to the respondent No. 1 they would commit any sin or would go to hell or would become objects of any divine displeasure or spiritual censure, and we are not satisfied that any undue influence as alleged by the petitioner was exercised on behalf of the respondent No. 1 in this election. We find issue No. 8 against the petitioner.

8. At the same time all these 135 or 140 witnesses of the petitioner say with one voice that the election propaganda of the respondent No. 1 invariably contained an appeal to the Hindus to vote for the respondent No. 1 and not for the petitioner or the respondent No. 2 and the plea advanced by the propagandists used to be that respondent No. 1 was a Hindu and as such he would protect the Hindu interests *viz.* the Hindu religion and the cow whereas the petitioner and the respondent No. 2 were Muslims who would encourage cow-slaughter whereby the Hindu religion would decline. The respondents Nos. 3 and 4 were also Hindu candidates ranged against the respondent No. 1, but it appears that much opposition was not expected from them and so no particular plea was advanced against them in the election propaganda of the respondent No. 1 except that the respondent No. 1 was given out as a champion of the Hindu interests whereas no such qualification was attached to the respondents Nos. 3 and 4. According to the petitioner's evidence this propaganda was in the beginning verbal only and the propagandists used to say these things to the electors by word of the mouth by speaking on the loud speaker in the mohallas of the city and in the villages, and a loud speaker was installed at the house of the respondent No. 1 also in the city and the same propaganda was made on this loud speaker as well, but in the last week or ten days preceding the date of the polling the propagandists brought out two printed leaflets Exs. P1 and P2 also and distributed their copies broadcast in the city and in the villages to make the propaganda more intensive and effective, and out of the petitioner's witnesses as many as 115 depose about the distribution of these leaflets at various places in the constituency. About 100 of these witnesses are disinterested and independent persons unconnected with the Congress or the petitioner and most of them are Hindus and no good reason has been shown as why they should not be believed when they say that such an appeal was made in the election propaganda of the respondent No. 1. There may be minor discrepancies here and there in the depositions of these witnesses but they can hardly be a valid ground for rejecting the petitioner's evidence as untrue.

9. The case of the respondent on the other hand is that in his election propaganda no such appeal was made, that the only appeal made was on the ground of his being a good person of independent views not tied down to the principles, policy or programme of any particular party, that there was no loud speaker installed at his house, that the leaflets Ex. P1 and P2 were not brought out on his behalf nor were they distributed in the constituency in the election days and that he came to know of them from the election petition only while others came to know of them much later. He too has examined a large number of witnesses in his report but it appears to us that these witnesses are not independent or impartial but are connected with him in one way or the other and most of them are Hindus of strong communal views and tendencies and many of them were his active supporters in the election in question; some of them have been closely connected with the Hindu Mahasabha and the Jan Sangh and the case of the petitioner is that the respondent No. 1 had the full support of the Hindu Sabha and the Jan Sangh in this election. Among his witnesses there are ten Muslims also, but two of them *viz.* Nasir Ahmad, R.W. 61 and Karim Ullah, R.W. 68 are altogether silent about the nature of his election propaganda; the others say that the election propaganda was wholly on non-communal grounds, but out of them Riaz Ahmad, R.W. 13, Mehdi Hasan, R.W. 30 and Fazal Majid, R.W. 50 have evidently been connected with the respondent; Riaz Ahmad admits that he worked as the respondent's reader for about two years upto 31st December 1952 when the respondent was a Special Magistrate of the II class; the respondent owns several motor vehicles and Mehdi Hasan admits that he was the respondent's driver in the election days and now he is the driver of Lala Madho Ram, R.W. 25, who is intimately connected with the respondent; Fazal Majid also admits that he was in the service of the respondent for some time; no connection between the respondent and his other five Muslim witnesses, Mangru Sheikh, R.W. 33, Jamaluddin, R.W. 35, Nanhe Khan, R.W. 38, Jafar Husain, R.W. 40 and Hamid, R.W. 51 has been made out and we do not know why they have come forward to depose for the respondent but we are not much impressed by their testimony; Jamaluddin and Nanhe Khan both belong to village Banehi and there is an obvious discrepancy in their testimony because although both of them say that the respondent's propagandists visited Banehi twice and

the first visit was 10 or 15 days before the polling, yet Jamaluddin says that the second visit was 8 or 9 days after the first visit while Nanhe Khan says that it was 8 or 9 days before polling.

10. Then we have the leaflets Exs. P1 and P2. Both are in Hindi and on blue paper and were printed at the Shanti Printing Press, Budaun, belonging to Lala Ram Saran Lal Rastogi, P.W. 142. Both contain an appeal to the electorate to vote for the respondent No. 1 in the bye-election of 3rd May 1953 and bear his election symbol, the balance, and at the top they carry the slogans, "Akhand Bharat Amar Ho", "Hindu Rashtra Ki Jai Ho" and "Gaubadh Band Ho". Ex. P1 is addressed to the general public and in it the Respondent No. 1 is described as the best, very able, fearless and independent candidate standing for the protection of Hindu interests and is over the names of 22 prominent Hindu citizens of Budaun city; it is without the name of the printer, the publisher and the press. Ex. P2 is addressed to the village people and is headed as the unanimous decision of the public of Budaun; in it the Respondent No. 1 is described as the best very able, fearless and independent candidate standing for the protection of Hindu interests and cow mother, while the petitioner and the Respondent No. 2 are described as persons who were bigoted Muslim Leagers upto 1947 and who should, therefore, be not given any votes; this leaflet is over the 22 names of the leaflet Ex. P1 and also one other name *viz.*, that of Lala Madho Ram Rastogi, R.W. 25 and it bears alright the name of the Shanti Press where it was printed. The case of the petitioner is that these leaflets were got printed by the Respondent No. 1 himself and that their copies were distributed widely in the constituency by his workers throughout the week immediately preceding the date of polling. The Respondent No. 1 denies any knowledge of or connection with these leaflets and says that he came to know of them for the first time from the election petition only; also his witnesses say that in the election days they had no knowledge at all of these leaflets and did not come across any copies of them and they came to know of these leaflets for the first time during the hearing of this case only, and these witnesses include Sri Vijai Bahadur advocate R.W. 1, Sri Beni Madho Rastogi R.W. 15, Sri Avadh Behari Lal R.D. 23, Sri Raghubir Prasad Agarwal R.W. 27, Sri Pratap Narain Dixit R.W. 5, Sri Debi Charan R.W. 4, Sri Amir Chand Gupta R.W. 16, Sri Parmatma Saran Rastogi R.W. 18, Sri Darbari Lal Vakil R.W. 53 and Sri Mai Dayal Vakil R.W. 54 whose names appear on both the leaflets and Sri Madho Ram Rastogi R.W. 25 whose name appears on Ex. P2 only; they deny altogether having issued any such appeal. Out of the remaining twelve persons whose names appear on Ex. P1 and P2 Sri Ram Narain Vaid is dead but the other eleven persons have not come into the witness-box to deny their knowledge of or connection with these leaflets and the Respondent No. 1 has offered no explanation for keeping them out of the witness-box.

11. To support his case that the Respondent himself got those leaflets printed at the Shanti Press the petitioner has examined Pransukh Morao, P.W. 152, of mohalla Jalandhri Sarai of Budaun, who says that in this election he was a worker of the Respondent No. 1 and that 7 or 8 days before the polling the Respondent No. 1 sent him to the Shanti Press with a slip and thereupon the proprietor of the Shanti Press, Lala Ram Saran Rastogi P.W. 142, gave him 1,000 copies of Ex. P1 and P2 and said that the remaining copies would be printed that very night. The case of the Respondent No. 1 is that Pransukh was not at all his worker in the Election and that this Pransukh is a man of Sri Ali Maqsood, Chairman of the Budaun Municipal Board, who is a Congressite. Also there is no evidence on the record to corroborate Pransukh on this point and thus his testimony on this subject may not be quite acceptable. But in view of the fact that these leaflets contain an appeal for votes for the Respondent No. 1 and the petitioner has produced satisfactory and reliable evidence to prove that their copies were widely distributed in the constituency by the workers of the Respondent No. 1 during the week immediately preceding the date of polling, we have no hesitation in making the inference that these leaflets must have been got printed by the Respondent No. 1 and his workers in the election days and for the election purposes as nobody else would have been interested in getting such an appeal issued. It is not the respondents case that some-body else got these leaflets printed and distributed without his knowledge or the knowledge of the persons whose names appear at the foot of these leaflets; on the other hand his case is only that these leaflets were not seen at all in the election days; at the same time it is not his case that somebody got these leaflets printed after the election for the purposes of the election petition and no such suggestion was made to Lala Ram Saran Lal in his cross-examination, and in these circumstances we do not believe that these leaflets, which were for the benefit of the Respondent No. 1, were not in circulation in the election days or that they were

printed and distributed without the knowledge or connivance of the Respondent No. 1.

12. The petitioner has examined Lala Ram Saran Lal Rastogi proprietor of the Shanti Press, Budaun, as his witness No. 142, who says that Ex. P1 and P2 were got printed at his press by Pt. Ram Narain Vaid deceased on 1st May 1953, but the contention of the petitioner is that this statement of Lala Ram Saran Lal is altogether false and the true fact is that the Respondent No. 1 himself got them printed about a week earlier and that Lala Ram Saran Lal has perjured and has also forged and fabricated his papers to support the Respondent No. 1, who is intimately connected with him and his family. The contention of the Respondent No. 1 is that Ram Narain Vaid was not his worker at all in the election and that Lala Ram Saran Lal is now displeased with him and so to harm him Lala Ram Saran is stating falsely that these leaflets were got printed by Pt. Ram Narain Vaid on 1st May 1953. We think that the contention of the petitioner is correct and should be accepted in preference to what is stated by Lala Ram Saran Lal or the Respondent No. 1. As to the connection between the respondent No. 1 and Lala Ram Saran Lal, the undisputed facts are that the latter did all the printing work of the former for this election, that his son Ramesh Chandra Rastogi was the polling agent of the respondent *vide* the polling agency form Ex. P46, that his brothers Parmatma Saran, Suraj Prasad and Raghubir Saran have come forward as R.W's. No. 18, 39 and 32 respectively and that this Parmatma Saran was the Respondent's polling agent also *vide* the polling agency form Ex. P47; another brother of his is Mangal Sen and according to the petitioner this Mangal Sen also was a polling agent of the Respondent; this Raghubir Saran owns two motor lorries and according to the petitioner this Suraj Prasad also has an interest in some lorries and all these lorries worked for the Respondent No. 1 on the polling day; also the name of this Parmatma Saran appears on the leaflets Ex. P1 and P2. This Suraj Prasad had earlier signed an appeal Ex. R9 in favour of the petitioner, but the statement of Suraj Prasad shows that he had done so only half-heartedly. As to the ill-will between the respondent and Ram Saran Lal, the only evidence is the solitary statement of the respondent himself as R.W. 89 at the *flag end* of the case that Ram Saran Lal's son Ramesh Chandra Rastogi requested him as an M.L.A. to recommend his paper 'Parivartan' for the Government Libraries and his Shanti Press for the printing of the school text books and that on his refusal to oblige him in this manner Ramesh Chandra brought out articles against him in the 'Parivartan'; no such suggestion was made at any earlier stage of the case and no indication of it was given at all in the cross-examination of Lala Ram Saran Lal, and in our opinion the relations between the respondent and Ram Saran Lal and his family continue to be intimate and cordial and Ram Saran Lal, though examined by the petitioner, has designedly made a statement as less unfavourable to the respondent as possible in the circumstances of the case.

15. Because of the cordial relations between the Respondent No. 1 and Ram Saran Lal the petitioner could not expect that Ram Saran Lal would make a true statement in the witness-box and thereby support the petitioner's case, but still the petitioner found it necessary to put Ram Saran Lal into the witness-box because Ex. P1 and P2 had been printed in his press and the petitioner rightly apprehended that if he did not produce Ram Saran Lal the Respondent either would not produce him and the result would be that the evidence of the printing of Ex. P1 and P2 would not be before the Tribunal. Now Ram Saran Lal, when summoned as the petitioner's witness, was in a fix; he could not deny having printed Ex. P1 and P2, nor could he state with any show of propriety that these leaflets had been printed by him at the instance of somebody after the election; he had to admit that these leaflets were printed by him in the election days and, therefore, he had to admit also that they were not printed at the instance of anybody hostile to the Respondent No. 1; the best course for him in these circumstances was to make a statement as less harmful to the Respondent as possible with due regard for show of propriety but little regard for truth, and he has done so by giving out the date of the printing of these leaflets as 1st May 1953, which could be the last conceivable date before the polling day of 3rd May 1953 and also by assigning the origin of these leaflets to Pt. Ram Narain Vaid, whose name appears on these leaflets alright but who is now dead and cannot be questioned. He has also made up his register of the press accordingly; his statement shows that he started a new register from 2nd May 1953; in the old register this order of Pt. Ram Narain Vaid is entered as of 1st May 1953, below which there is only one more order and then there are some blank pages; the explanation given by Ram Saran Lal for starting a new register on 2nd May 1953, is that the number of blank pages in the old register was considered insufficient for the purposes of the press and this explanation

may be correct, but the suggestion on behalf of the petitioner is that the entry of the alleged order of Pt. Ram Narain was not there in the old register originally as there was no such order, nor was there the following entry, and there was blank space only; Ram Saran Lal took advantage of this blank space and wrongfully entered the alleged order of Ram Narain and to give it a show of genuineness he entered below it another order also as the last order in the old register. He admits that no payment has been received for the printing charges in respect of this order of Ram Narain Vaid and that no bill for these charges was ever prepared or issued; he says that the printing charges amounting to Rs. 35 are outstanding and his explanation for the non-preparation of a bill is that perhaps nobody came on behalf of Pt. Ram Narain Vaid to demand a bill or make the payment; according to the contention of the petitioner the real explanation is that there was no such order at all and that all this is fabrication and forgery.

14. In his return of election expenses the Respondent No. 1 has shown a sum of Rs. 234 as the printing charges and has also attached a voucher of the Shanti Press for this sum. This voucher shows that Ram Saran Lal printed three notices (or leaflets) for the Respondent No. 1 for which the bills No. 212, 237 and 243 were issued. The bill No. 212 appears to have been in respect of the leaflet Ex. R1, which according to the common case of the parties was printed by Ram Saran Lal for the respondent; according to the petitioner's contention the Bills No. 237 and 245 were in respect of Ex. P1 and P2, and on behalf of the respondent there is no definite case on this point as to what were the notices or leaflets to which these Bills related. Even Lala Ram Saran Lal is unable to say that these notices or leaflets were, and it was not put to him in cross-examination by the respondent that these notices or leaflets were other than Ex. P1 and P2. Ex. R1 is an appeal for votes for the respondent No. 1 and it is in Hindi printed on white paper and no objection is taken to it on behalf of the petitioner. It was not suggested at all during the cross-examination of the petitioner's witnesses that any leaflets other than Ex. R1 had also been issued on behalf of the respondent, nor were any such leaflets produced before the Tribunal; also most of the respondent's witnesses say that in the election propaganda of the respondent no leaflets at all were distributed or at least they did not come across any, and the remaining witnesses of the respondent with two exceptions depose about one leaflet only as having been distributed on behalf of the respondent and they are careful to state that this leaflet was on white paper meaning thereby that it was no other than Ex. R1; even the respondent No. 1 himself does not depose about any other leaflets; one of the two exceptions is Raghubir Prasad Agarwal R.W. 27 who depose about a leaflet other than Ex. R1, but even at that stage no such leaflet was produced and Raghubir Prasad Agarwal is a highly interested witness who has been the Secretary of the Budaun Hindu Sabha for 6 or 7 years, whose name appears on Ex. P1 and P2 and who was also the respondent's polling agent; the other exception is Hakim Narendra Mohan R.W. 70, through whom two leaflets other than Ex. P1 were sought to be introduced as having been issued on behalf of the respondent No. 1 in the election; this Hakim Narendra Mohan also was an active worker and supporter of the respondent in this election and so he either is not an independent witness; he was not allowed by us to file these leaflets as they were being introduced at a very late stage of the case without any mention of them at any earlier stage. The contention of the petitioner is that such leaflets as Hakim Narendra Mohan wanted to introduce could be manufactured at any time when the services of Ram Saran Lal were readily available to the respondent.

15. Lala Ram Saran Lal P.W. 143 says that in his old register there are the relevant entries of the orders in respect of which he issued the Bills No. 237 and 243 to the respondent No. 1, and these entries show that one of these notices or leaflets was printed on 29th April 1953 and the other on 30th April 1953 and that there is some over-writing about the size of the leaflets printed on 30th April 1953. The contention of the petitioner is that this over-writing has been made in an attempt to dissociate the respondent No. 1 from Ex. P1 and P2. The petitioner does not agree that these notices or leaflets were printed as late as 29th April 1953 and 30th April 1953, but even if they were printed on these dates his contention is that these leaflets were Ex. P1 and P2, that they were printed at the instance of the respondent No. 1 and that there was still sufficient time for them before the date of polling to be distributed in the constituency and to have effect and we have little hesitation in accepting this contention of the petitioner. That the persons named in Ex. P1 and P2 were interested in the respondent No. 1 in the election and had, therefore, a motive for issuing such an appeal is evident from the fact that out of them Sri Bijay Bahadur, Advocate R.W. 1, Sri Raghubir Prasad Agarwal R.W. 27, Sri Parmatma Saran Rastogi R.W. 16, Sri Darbari Lal Vakil R.W. 53, Sri Sai Dayal Vakil R.W. 54 were his polling agents and Sri Darbari Lal was his counting agent also; according to the petitioner Ram Bahadur Lal Sarraf named in



these leaflets was also the respondent's polling agent being the same person as the one named in the polling agency form Ex. P95. Sri Bijay Bahadur and Sri Raghubir Prasad Agarwal say that they did not do any work for the respondent No. 1 except that on the polling day they worked as his polling agent, but Sri Mai Dayal R.W. 54 admits that Sri Bijay Bahadur and Sri Raghubir Prasad Agarwal helped the respondent in this election, although he adds that they did so in their individual capacity only and not as members of the Hindu Sabha. Sri Bijay Bahadur also admits that Sri Raghubir Prasad Agarwal and Sri Sia Ram Vakil worked for the respondent in this election and Sri Sia Ram's name appears on Ex. P1 and P2. Sri Bijay Bahadur was the President of the Hindu Sabha, Budaun, those days and is still so and is described as such in Ex. P1 and P2; similarly Sri Raghubir Prasad Agarwal was the Secretary of the Budaun Hindu Sabha those days and is still so and is described as such in these leaflets. Sri Mai Dayal Vakil R.W. 54 named in these leaflets is an active member of the Hindu Sabha as admitted by himself and is on its Executive Committee as admitted by Sri Bijay Bahadur. Sri Bijay Bahadur admits further that Sri Sia Ram Vakil who worked for the respondent in the election is a member of the Budaun Hindu Sabha. Among the persons named in Ex. P1 and P2 we find some other representatives also of Hindu religious organisations; one of them is Sri Ram Narain Vaid mentioned before who is described as the President of the Budaun Sanatan Dharam Sabha; another is Sri Pratap Narain Dixit R.W. 5, who was the Secretary of the Sanatan Dharam Sabha these days and is described as such in Ex. P1 and P2; the third is Sri Raja Ram Jigyasu described as the Secretary of the Budaun Arya Samaj. According to the petitioner's case the respondent No. 1 had the support of the Jan Sangh also in this election and among the persons named in Ex. P1 and P2 we actually find the name of Sri R. S. Agarwal, who is the Secretary of the Jan Sangh and is described as such in Ex. P1 and P2. The respondent has examined as his witnesses some persons belonging to the Jan Sangh, and they are Sri Tribeni Sahai R.W. 12, Sri Onkar Singh R.W. 17 and Sri Avdesh Saran R.W. 52, who say that in this election the Jan Sangh did not help the respondent but on the other hand published a leaflet Ex. R10 contradicting that the Jan Sangh was supporting Pt. Sri Niwas and explaining that the Jan Sangh was not taking any interest at all in the election as it was busy those days with the Kashmir agitation only. However, in spite of this leaflet Sri Onkar Singh admits having done some canvassing for the respondent on 1st May 1953, although Sri Onkar Singh is an M.L.A. elected on the Jan Sangh ticket, and we think that there was nothing to prevent Sri R. S. Agarwal from joining in the appeal Ex. P1 and P2 or to prevent him or any other member of the Jan Sangh from working for the respondent No. 1 in the election, when the Jan Sangh had not declared that it was against the respondent No. 1 or was supporting any other candidate. Sri Darbari Lal R.W. 53 says that the Jan Sangh helped Sri Nihal Uddin in the election but there is nothing to corroborate him on this point, and we think that it was really the respondent No. 1 who had the support of the Jan Sangh people including the Jan Sangh Secretary, Sri R. S. Agarwal. We are, therefore, satisfied that the leaflets Ex. P1 and P2 were brought out in the election days by the respondent No. 1 and his workers and supporters in furtherance of the prospects of his election and we do not believe that these leaflets had no existence in the election days, or that they were not in circulation those days, or that the respondent No. 1 had no connection with or knowledge of them or that they were brought out without his connivance. In fact these leaflets were part of his election propaganda that had been going on from before though by word of mouth only.

16. As already mentioned the election propaganda that was made on behalf of the respondent No. 1 by word of mouth, whether on the loud-speaker or otherwise, was on the communal lines inasmuch as votes of the Hindu electors were solicited for the respondent No. 1 on the ground of religion and these electors were asked to refrain from voting for the Muslim candidates on the plea of cow-slaughter and cow protection and we find the same kind of propaganda in Ex. P1 and P2 also in as much as these leaflets bear at the top the communal slogan 'Hindu Rashtra Ki Jai Ho' and in them the respondent No. 1 is described as the sole protector of Hindu interests and cow mother whereas the Muslim candidates are described as having been bigoted Muslim leaguers upto 1947. This was certainly an appeal to the Hindu electors to vote for the respondent No. 1 and refrain from voting for the Muslim candidates on the ground of community and religion. The appeal was systematic also inasmuch as the various parts of the Budaun city and the various villages of the constituency were frequently visited by the workers of the respondent No. 1 on all the 10 or 12 days preceding the polling day and some of the places were visited more than once; on the occasion of these visits this propaganda used to be made on loud speakers and the same propaganda used to be from a loud speaker at the house of the respondent No. 1 in the Budaun city; in the later days this verbal propaganda was also accompanied by the distribution of the

leaflets Ex. P1 and P2 so that a very large number of Hindu electors must have been subjected to this appeal and many of them several times from day to day. We find, therefore, that this appeal on behalf of the respondent No. 1 was not only communal or religious but was also systematic within the meaning of section 124(5) of the Representation of the People Act, 1951.

17. From the evidence on the record we are also satisfied that this systematic appeal on communal and religious grounds had material effect upon the result of the election though it is not possible for us to hold that the majority of votes in favour of the respondent No. 1 was procured by means of this corrupt practice. Nearly all of the 135 or 140 witnesses of the petitioner, who have deposed about the making of such an appeal on the several days at the various places in the constituency, have also stated that this appeal had great effect upon the Hindu electors inasmuch as although prior to the making of this appeal the Hindu electors had giving out generally that they would vote for the Congress candidate and some had been giving out that they would vote for the Praja-Socialist Party candidate, yet after this appeal these Hindu electors began to say that they would now vote for the respondent No. 1 only or would not vote at all as a question of religion was involved; these electors would meet in small groups in their respective localities as usual and then they would give out these views of theirs and that is how the petitioner's witnesses had occasion to know about the change in the views and tendencies of the electors as a result of this appeal. Also it is but natural that this appeal should have had such an effect; the workers of the respondent No. 1 making this appeal went out to many places in the constituency for 8 or 10 consecutive days and most of these places were visited more than once; these workers used to go out in motor and other vehicles and used to carry with them loud speakers on which they made the propaganda; also the same propaganda used to be made on a loud speaker installed at the respondent's house in the Budaun city, and in the later days the leaflets Ex. P1 and P2 were also brought out and distributed widely to make it more intensive and effective; the propagandists included important and influential local persons, and the persons whose names appeared on Ex. P1 and P2 were important and influential persons of Budaun including not only the office bearers of Hindu religious bodies but also representatives of several trades and professions and their words could not go in vain; also the nature of the appeal was very intriguing inasmuch as the respondent was represented not only as a Hindu but also as the sole protector of Hindu interests and cow mother whereas his rivals in the field were depicted not only as Muslim but also as those who had been bigoted Muslim leaguers upto 1947, and such a pernicious propaganda was bound to have its desired effect in weaning the Hindu electors to the respondent No. 1 and away from the petitioner and the respondent No. 2. We hold, therefore, that on behalf of the respondent No. 1 there was a systematic appeal to the Hindu electors to vote for him and to refrain from voting for the petitioner and respondent No. 2 on the ground of religion and that this appeal materially affected the result of the election and we find issue No. 7 accordingly.

18. *Issue No. 13.*—The leaflet Ex. P1, though printed at the Shanti Press of Lala Ram Saran Lal P.W. 142, does not bear on its face the name and address of the printer and publisher thereof and the petitioner's contention is that this is an illegal practice within the meaning of Section 125(3) of the Representation of the People Act, 1951. However, the omission of the name and address of the printer and publisher from Ex. P1 does not appear to have been intentional, and the explanation of Lala Ram Saran Lal is that these particulars may have been left out by over-sight or that they may have been actually printed and that portion of the leaflet may have been cut away by inadvertence at the press in the ordinary course of business or purposely by somebody else. Ex. P1 is printed on one side of the sheet only and the printed matter goes down to the very bottom of the sheet and it is not improbable that the name of the Press was actually printed on it at the bottom but was subsequently cut away either inadvertently or maliciously. In any case Lala Ram Saran Lal or the respondent No. 1 or his workers could have no purpose in omitting the name of the press from Ex. P1 when the name of the press found a mention in Ex. P2 alright and according to the petitioner both these leaflets were brought out and distributed at the same time, and we are, therefore not satisfied that any illegal practice was intended to be committed by omitting the name of the press in Ex. P1. We find this issue accordingly.

19. *Issue No. 12.*—This issue relates to the major corrupt practice defined in Section 123(8) of the Representation of the People Act, 1951, and the allegations about it are contained in para. 4(f) of the petition and the particulars are given in List F and supplemented by further and better particulars supplied by the petitioner on 25th February 1954. In list F the petitioner has named twenty-three persons and has alleged that they were persons serving under the Government of

the Uttar Pradesh and yet the respondent No. 1 procured and obtained their assistance for the furtherance of the prospects of his election; seven of them have been described as Mukhias or village headmen and sixteen as the panches or Sarpanches of village Panchayati Adalats. The respondent does not admit these persons to be persons serving under the Government and contends further that none of them worked for him in the election. The case of the persons described as panches or Sarpanches is easily disposed, as we do not think that panches or Sarpanches of Panchayati Adalats are persons serving under the Government as contemplated in Section 123(8), nor do we think that they are any village officers within the meaning of explanation (b) of Section 123(8). Certainly a Gorakhpur Tribunal of U.P. has in two cases held them to be such persons but an Allahabad Tribunal has taken a contrary view, and we respectfully agree with the view of the Allahabad Tribunal and are unable to accept the view of the Gorakhpur Tribunal. In these circumstances it is not necessary for us to go into the question as to whether the persons described as panches or sarpanches really worked for the respondent in the election or not as their working would not amount to a corrupt practice at all.

20. Out of the persons described as the mukhias the petitioner has pressed his case in respect of 5 only, viz., Rai Singh, Beni Ram, Jasbir Singh, Hulas Singh and Daryao Singh, and has given up his case as regards Madari Singh and Bhimsen. However, he has pressed the case in respect of one person more viz. Janki Prasad of village Deorijit, who is described in List F as a sarpanch only but according to the petitioner's contention he is a village headman also. On behalf of the respondent it is contended that when in List F this Janki Prasad has not been described as a headman the petitioner cannot contend now that he is a headman, and we think that there is considerable force in this contention of the respondent. The further contention of the respondent in respect of Janki Prasad is that he was actually a worker of the petitioner in the election and not at all of the respondent, and this contention is supported by documentary evidence also inasmuch as Ujagar Singh R.W. 55, who was the respondent's polling agent at the Ghatpuri polling station, presented a written complaint Ex. R11 and R12 to the Presiding Officer of the polling station on the polling day and in this complaint he named this Janki Prasad also as a worker and supporter of the petitioner. In these circumstances we are very doubtful if this Janki Prasad was really a worker of the respondent in the election, and this disposes of the case of Janki Prasad of Deorijit.

21. Beni Ram or Beni Singh is Mukhia of Amgaon, Jasbir Singh is mukhia of Nagla Sharqi, Hulas Singh is mukhia of Lakhanpur and Daryao Singh is mukhia of Singraura, and according to the petitioner's evidence all the four of them canvassed for the respondent in this election, which fact is denied on behalf of the respondent, and after giving the matter our best consideration we are rather doubtful that any of these four persons really worked for the respondent. According to the official register of mukhias, Ex. P. 43, the mukhia of Amgaon is Beni Singh, whereas in his list the petitioner has given his name as Beni Ram, but we do not think that this is any material discrepancy and in our opinion the reference is to one and the same person; Beni Ram has been named by about a dozen witnesses of the petitioner as having done canvassing for the respondent in several villages on several days in this election, but Beni Singh Mukhia has himself come into the witness box as R. 36 and he denies having done any work for the respondent and we are, therefore, not quite satisfied about his alleged working. About Jasbir Singh there was some controversy as to whether he was the mukhia of Nagla Sharqi in the election days also or not, but this controversy has been set at rest by the admission of S. I. Malkhan Singh R.W. 74 that the mukhia of Nagla Sharqi in the election days was Jasbir Singh; Jasbir Singh has been named by about a dozen witnesses of the petitioner as having worked for the respondent in the election, but Fazal Majid R.W. 50, Nawab Singh R.W. 58 and the respondent himself as R.W. 89 say that Jasbir Singh did not work for the respondent in the election, and we see no good reason to believe the petitioner's witnesses in preference to the respondent and his witnesses; the respondent has not been able to produce Jasbir Singh as a witness and his explanation for it is that Jasbir Singh is now under an obligation to the petitioner, and in these circumstances we are not satisfied about the alleged working of Jasbir Singh either. Hulas Singh has been named by about half a dozen witnesses of the petitioner as having worked for the respondent, but Hulas Singh himself has come forward as R.W. 14, and he and Meharban Singh R.W. 34 deny that Hulas Singh worked for the respondent and so does the respondent himself as R.W. 89, and in these circumstances we are not satisfied about the alleged working of Hulas Singh either. Daryao Singh has been named by only four witnesses of the petitioner as having worked for the respondent and none of these four witnesses fixes his identity as Daryao Singh Mukhia; Gulfam Singh

P.W. 33 and Rupl P.W. 126 say only that the canvassers of the respondent included Daryao Singh but do not say that this Daryao Singh was the mukhia or was of village Singraura; Prahladi Lal P.W. 36 says that this Daryao Singh was of village Singraura but does not say that he was the Mukhia, while Parshadi P.W. 10 who does not describe Daryao Singh as the Mukhia actually gives his residence as Yusufnagar instead of Singraura; in these we are not satisfied about the alleged working of Daryao Singh mukhia either.

22. However, the petitioner's case as regards Rai Singh Mukhia of Yusufnagar is very much stronger. He has been named by 26 witnesses of the petitioner as having canvassed for the respondent in the election, and we see no good reason to disbelieve most of these witnesses. The witnesses who name him are Kalyan Singh P.W. 1, Kallu P.W. 2, Kunwar Singh P.W. 4, Raghubir Singh P.W. 5, Lachhman P.W. 8, Gyan Singh P.W. 9, Parshadi P.W. 10, Sukha Singh P.W. 11, Jandall Singh P.W. 15, Deo Datt Sharma P.W. 20, Bihari P.W. 21, Har Prasad P.W. 23, Gobardhan Singh P.W. 31, Ram Murti Singh P.W. 45, Sadhu Singh P.W. 63, Percy P.W. 54, Ram Singh P.W. 70, Ram Prasad P.W. 71, Sri Karan P.W. 77, Girdhari P.W. 78, Gulab Singh P.W. 84, Charan Singh P.W. 115 and Sobhi Ram P.W. 120. Most of these witnesses describe him as Rai Singh only without adding that he is a mukhia or is of Yusuf Nagar, but about half a dozen do describe him as a mukhia or as a resident of Yusufnagar, and two viz Sukha Singh P.W. 11 and Deo Datt Sharma P.W. 20 give his full description as the Mukhia of Yusufnagar, and in these circumstances there can be no doubt about his identity; certainly Parshadi P.W. 10 describes him as Rai Singh of Singraura but we think that it is only a slip of his tongue and that he also means to name this very Rai Singh Mukhia of Yusufnagar. In List F the only mention about this Rai Singh Mukhia is that on the polling day he worked at the Kunwargawan polling station, and in support of it the petitioner has proved the polling agency form Ex. P.S. 9 over the respondent's signatures and containing the name of Rai Singh as the polling agent. However, in list A of the petition the petitioner has mentioned alright that this Rai Singh Mukhia of Yusufnagar did the communal propaganda for the respondent No. 1 by canvassing for him at some 30 or 40 villages named in the List from 26th April 1953 to 2nd May 1953 as detailed in item No. 7 of this list, and it is this canvassing that the petitioner's witnesses have come forward to prove; they say that Rai Singh used to come with other workers of the respondent No. 1 in a motor lorry and do canvassing for him on a loud speaker. On behalf of the respondent it is admitted that in the election days his workers used to go out in motor lorries to canvass for him and we see no good reason to disbelieve the petitioner's evidence that Rai Singh was one of these workers, although this fact is denied on behalf of the respondent. The respondent No. 1 has come forward to say that Rai Singh did not work for him in the election but there is no evidence at all to corroborate him on this point; he has not examined Rai Singh as a witness and his explanation for it is that Rai Singh is displeased with him because after the election Rai Singh wanted his recommendation for a license and he refused to oblige Rai Singh, but again there is no evidence to corroborate him on this point either, and in these circumstances we have little hesitation in accepting the petitioner's evidence that Rai Singh Mukhia did canvassing for the respondent No. 1 in this election for the furtherance of the prospects of his election. Rai Singh Mukhia as a village headman was certainly a person serving under the Government of the Uttar Pradesh within the meaning of Explanation (b) to Section 123(8), and this proposition has not been disputed by the respondent. The question now is as to whether this assistance from Rai Singh was obtained by the respondent No. 1 or his agent, or by any other person with the connivance of the respondent or his agent as contemplated by Section 123(8). Certainly there is no direct evidence on this point, nor is there any definite allegation about it in the petitioner's pleadings except that in list F it is mentioned that the respondent No. 1 procured and obtained Rai Singh Mukhia's assistance for 3rd May 1953 for the Kunwargawan polling station. But we have to take into consideration the fact that the polling agency form Ex. P. 89 is dated 28th April 1953 and on his appointment as a polling agent on that day by the respondent he became the respondent's agent within the definition of 'agent' as given in Section 79(a) of the Act and it must be held that the assistance rendered by Rai Singh on and after that day for the furtherance of the prospects of the respondent's election must have been obtained and procured by Rai Singh himself as respondent's agent who was thus obtaining and procuring the assistance of himself as a person serving under the U.P. Government, and thus the requirements of Section 123(8) must be deemed to have been fulfilled. We have also to remember that Rai Singh used to go for canvassing in the respondent's propaganda lorry with other workers of the respondent, and so it cannot be supposed that his canvassing was without the knowledge, consent or connivance of the respondent. We find, therefore, that

the canvassing by Rai Singh was fully with the connivance of the respondent No. 1 and his agents and as such the major corrupt practice defined in Section 123(8) was committed by the respondent No. 1 and his agents.

23. *Issue No. 14(a) (b) and (c).*—This issue is about the respondent's return of election expenses and the allegations concerning it are contained in para. 6 of the petition and the particulars are given in List H and in the further and better particulars supplied by the petitioner on 25th February 1954. It is alleged that the return and the declarations verifying it are false in material particulars, that the items of expenditure entered in the return are lacking in some particulars such as 'on what account', 'rate of payment' and 'description of payee', that several items of expenditure though actually incurred have been omitted from the return to keep the expenses within the prescribed limit and that more than the prescribed number of persons were engaged by the respondent on payment, but the respondent No. 1 denies all these allegations. It is alleged in list H that the salary of the paid workers was Rs. 1,000, and in the further and better particulars the petitioner has named these workers and has also mentioned the amount paid to each of them. Six such persons are thus named in the further and better particulars but the respondent has denied having engaged any of them on payment. The petitioner has adduced evidence in respect of only two of them viz. Sultan Singh of Singraura alleged to have been paid Rs. 200 for one month and Chimman Singh of Binawar alleged to have been paid Rs. 100 for one month and this evidence is not at all satisfactory; the petitioner's witnesses on this subject are Zalim Ram P.W. 3 of village Sikrauri and Shyam Lal P.W. 7 of village Bilhat, but their statements are inconsistent with each other. Zalim Ram says that Sultan Singh and Chimman Singh were engaged by the respondent No. 1 and Sri Ram at his (Zaim Ram's) house about a month before the polling day, but Shyam Lal says that they were engaged at the house of Harnandan Singh of Bilhat about a fortnight before the polling day; on the other hand, Sultan Singh himself has come forward as a witness for the respondent to say that he was an honorary worker only and not a paid worker and we see no good reason to disbelieve Sultan Singh; R.W. 45 about Chimman Singh the respondent says that he was not his worker at all, and in any case we are not satisfied that he was a paid worker. The petitioner has adduced no evidence at all in respect of the other four alleged paid workers, viz. Nawab Singh of Papar, Lalata Prasad of Budaun, Bansi of Budaun and Gulfam Singh of Asirs Birkhan; the respondent himself has examined Lalata Prasad and Nawab Singh as his witnesses and they admit having worked for him in the election; Lalata Prasad R.W. 60 says that he was an honorary worker only; Nawab Singh R.W. 58 does not say whether he was an honorary worker or not, but in his cross-examination there is no suggestion at all on behalf of the petitioner that he was a paid worker. We are, therefore, not satisfied that the respondent employed for payment any of the six persons named by the petitioner and this disposes of the petitioner's contention that the respondent engaged on payment more persons than the number permitted by law.

24. Next we take up the items of expenditure alleged to have been omitted by the respondent from his return of election expenses. In list H these items are given as eight in number and their total comes to Rs. 4,025 only. The maximum prescribed limit of election expenses in the case of the respondent No. 1 was Rs. 8,000 and in his return he entered expenses amounting to Rs. 2,705/10/- only, so that he could have easily included in his return the alleged items also without the fear of exceeding the maximum limit and it cannot be contended that he omitted any of these items because of any such fear. The explanation of the respondent for not entering them in his return is that most of them were not incurred at all and the rest were not election expenses at all and need not have been entered, and we think that the respondent's explanation is correct and should be accepted. One of these eight items is the item of Rs. 1,000 on account of the salary of the alleged paid workers and we have already dealt with this item above and have held that there were no such paid workers. Another item is of Rs. 20 for cost of stencil cutting; the respondent has already included in his return a sum of Rs. 4 on this account and the petitioner has given no evidence to show that any sum greater than Rs. 4 was spent on stencil cutting. Then there is an item of Rs. 300 for preparing copies of electoral roll and another item of Rs. 200 for preparing the voters' slips; the respondent says on oath that all this work was done honorarily by the members of his family and he had not to spend anything on this account and there is no evidence on behalf of the petitioner to the contrary. Further, there is the item of Re. 1 for the price of the form of the return of election expenses and the item of Rs. 4 for the price of the General Stamp for the declarations verifying this return and the contention of the respondent is that these expenses, though incurred, were not election expenses at all and did not require to be shown; we are doubtful if these expenses were

really expenses incurred on account of, or in connection with, the conduct or management of the election or were required to be entered in the return, and in any case these items are very petty and their omission is not of much consequence. Another item is of Rs. 2,000 for the cost of petrol; in his return the respondent has already entered a sum of Rs. 1,482/12/- for the cost of petrol but the contention of the petitioner is that the actual cost of petrol was Rs. 3,482/12/- and not only Rs. 1,482/12/-; however, the petitioner has given no evidence on this point to show that any money beyond Rs. 1,482/12/- was spent on the purchase of petrol or that petrol worth more than Rs. 1,482/12/- was consumed by the respondent in the election, and in these circumstances we accept the respondent's statement on oath that in his return he has shown all the expenses of his purchase of petrol. The eighth and last item of the series is the sum of Rs. 500 on account of salaries of employees of the motor vehicles said to have been used by the respondent No. 1 in his election and in the further and better particulars a list of 27 such employees has been given. The respondent's reply is that most of these vehicles did not work for him at all, that only his own motor vehicles worked for him but for them he had not to engage any additional staff for the election and all the work was done by his permanent and regular staff only and that he used only one borrowed car but this car belonged to his friend Sri Mehta of Bareilly who lent it to him along with the driver and so he himself had to pay nothing for the salary of the driver of this car either. The respondent has come into the witness-box in support of his case and there is no evidence on behalf of the petitioner to the contrary to prove that the respondent engaged any additional staff for his own vehicles for the election or that he had to pay anything for the salary of the staff of any borrowed vehicles. In these circumstances we accept the respondent's case on this point and find that the petitioner has failed to prove that any expenses actually incurred by the respondent in his election have been omitted from his return and in our opinion the return in question is not false in any material particulars.

25. We have examined the respondent's return of election expenses and we do not think that in respect of any item entered in it the respondent has failed to mention any of the particulars required by law to be mentioned. The respondent was his own election agent and as such he signed the two declarations verifying the return and verified the two declarations in the presence of a Magistrate, but in the Magistrate's endorsements of verification the name of the respondent as the person making the verification is missing and the space for it has been left blank; the respondent has come into the witness box to say that he actually appeared before the Magistrate and verified the two declarations and we see no good reason to disbelieve him as there is no evidence at all to the contrary. The endorsements of the verification have been duly signed by the Magistrate, and we think that it was by over-sight only that the Magistrate omitted to enter the name of the respondent as the person verifying the declarations. We find, therefore, that the objections of the petitioner to the respondent's election expenses or his return of these expenses or his declarations verifying this return are not of much consequence and in our opinion no corrupt practice has been made out on their basis.

26. *Issue No. 15.*—This issue is about the irregularities said to have been committed in this election. The allegations in respect of them are contained in Para. 7 of the petitioner and the particulars are given in list I and supplemented by the further and better particulars supplied by the petitioner on 25th February, 1954, and it is alleged that these irregularities materially affected the result of the election. On behalf of the respondent it is denied that there were any such irregularities or they had any material effect upon the result of the election. The petitioner relies upon five such cases and the first one relates to Sri Krishna Inter College polling station, Budaun; it is alleged that seven persons appointed by the petitioner as his polling agents for this polling station did not turn up at the polling station on the polling day and so the petitioner wanted to appoint other persons in their stead as his polling agents, but the Presiding Officer of the polling station wrongly did not allow him to do so and it was only about two hours and a half after the commencement of the polling that he was permitted to do so on the intervention of the District Magistrate. The petitioner's witnesses on this point are Mohammad Husain P.W. 131, Damodar Dass P.W. 146, Anand Swaroop Saxena P.W. 151 and the petitioner himself as P.W. 158; Mohammad Husain, Damodar Dass and Anand Swaroop Saxena were the polling agents of the petitioner appointed on the polling day at the polling stations itself and they and the petitioner say that they were allowed by the Presiding Officer to take up their duties at 10 A.M. only not earlier and that it was on the intervention of the District Magistrate only that they were allowed to take up their duties; the District Magistrate, Sri D. S. Gahlaut has also been examined by the petitioner

as his witness No. 130 and he says that on the polling day he visited this polling station at about 9 A.M. and there the petitioner complained to him about this matter whereupon he asked the Presiding Officer to allow the change in the personnel of the polling agents and the Presiding Officer said that he would do it. The respondent has examined the Presiding Officer Sri R. C. Bhandari as his witness No. 24 and his explanation is that he did not allow the change in the beginning as the petitioner was not willing to revoke the authority of the old polling agents as required by Section 48 of the Representation of the People Act, 51, and Rule 14 of the Representation of the People Rules, 51, and that it was only after the arrival of the District Magistrate that the petitioner made the revocation whereupon he (Sri Bhandari) allowed the change forthwith. The respondent did not mention in his written statement that the petitioner was not willing to revoke the authority of his old agent nor did he suggest any such thing in the cross-examination of the petitioner's witnesses, Sri D. S. Gahlaut, Mohammad Husain, Damodar Dass and Anand Swaroop Saxena, but the law required that the authority of the old agents be revoked before the appointment of new ones and the petitioner either did not plead that he had made the necessary revocation nor was this thing brought out in the examination-in-chief of his witnesses; even in his own examination-in-chief the petitioner did not mention the fact of revocation and it was only when in the cross-examination the respondent raised the question of revocation that the petitioner stated that he had made the necessary revocation already and on this point we see no good reason to believe the petitioner in preference to the Presiding Officer. We find, therefore, that in the absence of the necessary revocation the Presiding Officer was not wrong in not allowing the change in the personnel of the polling agents and that there was no such irregularity. At the same time we are not satisfied that any such irregularity had any material effect upon the result of the election; the petitioner himself was present at this polling station and some of his polling agents were certainly thereto watch his interests and it has not been shown to our satisfaction that the delay in the admission of his new agents injured his interests in any way or gave any advantage to the other candidates.

27. The second case of alleged irregularity is also of the polling day and of the Sri Krishna Inter College polling station. In list I it is alleged that the Presiding Officer of this polling station allowed a large number of workers of the respondent No. 1 within the prohibited distance and inside the polling station and these workers obstructed the entrance of the petitioner's voters and between 4 and 5 P.M. they totally stopped the entrance of such voters. It is alleged further that the Presiding Officer was helping the respondent No. 1 by all means and in the further and better particulars the petitioner has given the names of thirteen persons as the respondent's workers improperly admitted within the prohibited distance and the polling station. On behalf of the respondent all these allegations are denied and it is contended that there was no such thing. The petitioner's witnesses on this subject are Brij Boshi Lal P.W. 19, Mohammad Said Khan P.W. 100, Ziauddin P.W. 101, Ali Mohammad Khan P.W. 102, S. I. Rafiq Ahmad P.W. 108, Abdul Wahab Khan photographer P.W. 125, Mohammad Husain P.W. 131, Ram Dayal P.W. 143, Damodar Dass P.W. 146, Anand Swaroop Saxena P.W. 151 and the petitioner himself as P.W. 158. Mohammad Said Khan Ziauddin and Ali Ahmad Khan are three of the voters who are said to have been prevented from entering the polling station between 4 and 5 P.M.; Brij Boshi Lal and Ram Dayal were also voters present at the polling station at that time; S. I. Rafiq Ahmad happened to pass by the polling station at that time on duty; Mohammad Husain, Damodar Dass and Anand Swaroop Saxena were the petitioner's polling agents at this polling station; the petitioner says that he reached the polling station at that time on getting information that his voters were being stopped at the gate; and Abdul Wahab Photographer says that he was called there at that time from his shop by the petitioner and asked to take photographs of the scene and he took the photographs Ex. P19 and P20, Ex. P19 depicting the situation at the gate of the College compound and Ex. P20 depicting the situation inside the compound. However, the petitioner and his witnesses do not give any consistent version of the alleged occurrence and we are very doubtful if there is any element of truth in it; Mohammad Said Khan says that about 250 or 300 voters were prevented from going into the polling station but he names only five persons as those preventing the ingress and does not say that there were any more such persons; Ziauddin also says that about 250 voters were prevented from going in but he is able to name only four of the persons who were preventing the ingress and he does not say how many persons in all were there preventing the ingress; Ali Mohammad Khan says that 300 or 350 voters were prevented from going in but he does not give the number of persons preventing them like this and he is able to name only one such person; Ram Dayal says that 200 or 250 voters were prevented from going in by 100 or 125 persons but he is able to name only four of the persons preventing the ingress; Mohammad Husain also

says that 200 or 250 voters were stopped by 100 or 125 persons but out of these 100 or 125 persons he is able to name only four; Damodar Dass does not say how many voters were being prevented by how many persons and is able to name only two of the persons preventing the ingress; Anand Swaroop Saxena says that about 140 or 150 persons were barring the two gates of the compound and preventing the ingress of voters but he is able to name only seven such persons and he does not give the number of voters prevented from going in; the petitioner says that about 100 persons prevented 250 or 300 voters at the two gates of the compound but he has been able to name only ten persons out of those barring the gates; Abdul Wahab photographer says that he took the photographs Ex. P19 and P20 when some persons were being prevented from entering the gate of the College but he does not give the number of persons being so prevented or the number of persons so preventing them and also his photographs Ex. P19 and P20 do not show definitely that anybody was prevented from going in and the photographs show only a gathering of persons; S. I. Rafiq Ahmad says that he saw 25 or 30 persons at the gate preventing 15 or 20 persons from going in and out of these 25 or 30 persons he is able to name three only; Brij Bashi Lal says that 7 or 8 workers of the respondent prevented 10 or 20 voters from going in and he does not give the name of any such worker; Brij Lal's son Prem Narain Saxena P.W. 22 says that he too was present at this polling station upto 5 P.M. but he does not say that there was any such occurrence. The respondent's witnesses on this point are Sri Vijay Bahadur Advocate R.W. 1, Tribeni Sahai R.W. 12, Sri R. C. Bhandari Presiding Officer R.W. 24, Raghubir Prasad Agarwal R.W. 27, Suraj Prasad R.W. 39 Fazal Majid R.W. 50 and S.I. Malkhan Singh R.W. 74. Sri Vijay Bahadur and Raghubir Prasad were the respondent's polling agents at this polling station and they too are said to have barred the gate but they say that there was no such occurrence; Tribeni Sahai, Suraj Prasad and Fazal Majid also are said to have barred the gate but they say that they were not present there at all at that time; S. I. Rafiq Ahmad P.W. was a subordinate of S. I. Malkhan Singh R.W. those days and says that he spoke of the occurrence in question to S. I. Malkhan Singh that very day, and S. I. Malkhan Singh has come forward to contradict him and to say that S. I. Rafiq Ahmad never gave him any such information, and in these circumstances we see no good reason to believe the petitioner's witnesses that there was any such occurrence.

28. Sri R. C. Bhandari Presiding Officer R.W. 24 also says that there was no such occurrence and that what actually happened was only that he gave orders at 4-55 P.M. that the electors who had not entered the boundary of the polling station by that time should not be allowed to enter the boundary afterwards and that he also deputed a police Sub-Inspector to see that these orders were carried out so that the voters who had not entered the boundary by 4-55 P.M. were not allowed to cast their votes; he adds that about 200 or 300 electors were inside the boundary at 4-55 P.M. and their votes had to be recorded upto 6-30 P.M. On behalf of the respondent it is contended that under the law and rules the Presiding Officer was authorised to prevent the electors from coming into the polling station boundary after 4-55 P.M., although the hour fixed for closing the poll was 5 P.M. but the respondent's counsel has not been able to show us any such rules or law; in fact Rule 17(2) of the Representation of the People Rules, 1951 says that the Presiding Officer shall close the polling station at the hour fixed in that behalf under Section 56 of the Representation of the People Act, 1951 and this hour was 5 P.M. and not 4-55 P.M. also the Legislative Department (Elections) of the U.P. Government issued a booklet containing its instructions regarding the conduct of general elections and we were referred to the instruction No. 67 printed on page 41 of this publication on the subject of the close of the poll, but even this instruction does not say that the entrance to the polling station should be closed before the fixed hour of 5 P.M. It was, therefore, certainly an irregularity on the part of the Presiding Officer to close the entrance of the polling station five minutes before the hour fixed for the closing, but in the absence of any reliable evidence as to the number of electors who were thus prevented from entering the polling station between 4-55 P.M. and 5 P.M. we are not satisfied that this irregularity had any material effect on the result of the election. Further we are not satisfied that the Presiding Officer committed this irregularity wilfully to help the respondent and it appears that he did so in good faith only under some mistake.

29. The third case of alleged irregularity relates to the Government Normal School and the Town Hall polling stations of Budaun City. There were seven polling stations in all in the Budaun city and at all these polling stations separate polling booths were reserved for female voters and for male voters. The grievance of the petitioner is that at the Government Normal School and Town Hall polling stations female voters were also allowed to cast their votes at the



booths reserved for male voters and *vice versa* with the result that many voters cast their votes twice *viz.*, at the booths reserved for females and also at the booths reserved for males and that this was done purposely to help the respondent No. 1. On behalf of the respondent it is denied that at any polling station any male voters were allowed to cast their votes at the booths reserved for females or that at the Town Hall polling station female voters were allowed to cast their votes at the booths reserved for males; it is admitted that at the Government Normal School the female voters also were allowed to cast their votes at the booths reserved for males, but it is contended that this was done only to relieve the congestion at the booths reserved for the females and not at all to help the respondent No. 1 and that there was no case at all of any female voter casting her vote twice. In his further and better particulars the petitioner has given a list of 12 cases of double voting and all these cases are of female voters. He has produced Taslim Ahmad Khan P.W. 141 who was his polling agent at the Government Normal School and who says that he complained to the Presiding Officer there that some female voters were casting their votes twice, *viz.* in the booths reserved for females and also in the booths reserved for the males, although he does not say that he himself actually detected any female voter casting her vote twice and his knowledge is derived only from a comparison of the marked copies of electoral rolls of the several booths; he says that on such comparison 8 or 10 cases of double voting were detected. The petitioner himself says that there was double voting at the Town Hall polling station also, but there is nothing at all to corroborate him on this point. The respondent has examined the Presiding Officer of the Government Normal Polling Station, Sri Ganpat Sharma, as his witness No. 19, who explains the circumstances in which female voters also were allowed to cast their votes at the booths meant for the males at this polling station and adds that no case of double voting was detected or reported to him. The petitioner's counsel took us through the marked copies of the electoral rolls to satisfy us that there was actual double voting in the twelve cases set forth by the petitioner in the further and better particulars, but on examination no double voting was found in the case of Srimati Rani Bai named at serial No. 1 of the further and better particulars, double voting was found in the case of the five ladies named at serial Nos. 2 to 6 and we did not think it worth while to examine the remaining six cases and we may safely accept Taslim Ahmad Khan's statement that 8 or 10 cases of double voting were found out on a comparison of the marked copies of electoral rolls at the end of the polling day.

30. We are of the opinion that allowing female voters to cast their votes also at the booths reserved for males was certainly an irregularity as it was in contravention of the proviso (a) of Rule 18 (2) of the Representation of the People Rules, 1951 and provided an opportunity for double voting but we are satisfied that it was done in good faith only for the convenience of the female voters and not to help or harm any candidate. Also we do not think that this irregularity had any material effect on the result of the election as there were only 8 or 10 cases of double voting and we do not know for which candidate or candidates these electors voted and it cannot be said definitely that they or any of them voted for the respondent No. 1.

31. The fourth case of alleged irregularity is also of the polling day and it is alleged that at 10 or 11 A.M. Yashpal, polling agent of the respondent No. 1, gave a beating to Rais Ahmad P.W. 37, polling agent of the petitioner, between the Government Normal School Polling station and the Sotha Junior High School polling station in Budaun and the Presiding Officers of the two polling stations, which were just near each other, did nothing in the matter, which gave an impression to the petitioner's voters that the officials were helping the respondent and consequently a large number of the petitioner's voters ran away without casting their votes and in the further and better particulars the number of such voters is given as 500 and also the names of sixteen of them are mentioned. On behalf of the respondent No. 1 all this is denied and it is contended that there was no such occurrence. The parties have given evidence on this subject and after a consideration of this evidence we are not satisfied that there was any such occurrence; in any case the occurrence, if any, was not of a such serious nature or magnitude as is sought to be made out; perhaps it was only an altercation or a very minor clash which was not unnatural or unusual in the tense and excited atmosphere of the polling and was not even worth noticing and so no body took any notice of it or cared to bring it to the notice of the authorities in writing. This Rais Ahaad P.W. 37 does not say that he was actually beaten by Yashpal and says only that there was a dispute between him and Yashpal outside a polling booth at Sotha Junior High School polling station and there was some pushing also whereupon Yashpal became ready to assault him and this created an

apprehension that there might be a Hindu-Muslim riot, and so some 250 Muslim voters ran away from the two polling stations; Nausha P.W. 38 says that there was a quarrel only and does not say that there was any beating but adds that Richpal (meaning perhaps Yashpal) shouted also that the Muslims should be beaten and according to him some 300 or 350 Muslims ran away. Banna P.W. 39 says that there was a quarrel only whereupon 300 or 400 Muslims ran away from the polling station and he does not say that there was any actual beating or even any threat of beating; Mauludi P.W. 41 says only that he heard of this quarrel when he was on his way to the polling station to cast his vote and that thereupon he ran back to his grove and did not go up to the polling station; Bhuppt R.W. 69 says that there was an actual fight between Richpal and Rais Ahmad and during this fight Richpal shouted out that Muslims should be beaten whereupon 400 or 500 Muslims ran away from the two polling stations; Rameshwar Dayal P.W. 79 says that Yashpal abused Rais Ahmad and it appeared that he would attack Rais Ahmad and he also said that the Muslim should be caught and thereupon Rais Ahmad started running away and some Hindus pursued him and then some 250 or 300 other Muslims also ran away; Krishna Lal P.W. 80 says that he saw Rais Ahmad running away by jumping over a wall and Yashpal was pursuing him and shouting that he should be caught and not allowed to escape as he was making 'Garbar' and that on account of this incident 300 or 400 Muslims ran away because of fear; Nihal Chand Sharma P.W. 88 says that he saw some 300 or 400 Muslim voters running away and just then Krishna Lal P.W. 80 informed him that Yashpal had given pushes to Rais Ahmad who had thereupon run away. Bhammi P.W. 105 says that what happened was that at the polling station Yashpal canvassed the voters and Rais Ahmad objected to it and this led to much disturbance and 500 or 600 persons ran away from the polling station; Ramesh Chand P.W. 145 says that in his presence Yashpal gave a beating to Rais Ahmad whereupon Rais Ahmad and all the voters present ran away. The respondent's witnesses Shri Dutta Mal R.W. 56 and Avinashi Ram R.W. 63 say that there was no such quarrel or fight and Sri Brij Behari Lal R. W. 8, who was the Assistant Presiding Officer at the Sotha Junior High School polling station, says that he never came to know of any such occurrence. Rais Ahmad admits that in this election he was an active worker of the petitioner who runs a petrol pump in a kothi belonging to Rais Ahmad's father as the Mutwalli, and it may be that Rais Ahmad was a very jealous worker of the petitioner and in his zeal he did something on the polling day at the polling station which annoyed Yashpal and resulted in an altercation or even a minor clash between the two, but we are not satisfied that because of any such occurrence any considerable number of voters ran away without casting their votes. It was not a case of undue influence at all nor was such a plea taken in the petition. Nor was it a case of non-compliance with the provisions of any election law or rules, and in any case we are not satisfied that it was any irregularity materially affecting the result of the election.

32. The last instance of alleged irregularity relied upon by the petitioner relates to the preparation and revision of the electoral roll and it is alleged that the electoral roll was not prepared or revised according to law and a large number of Muslim voters entered in the original roll were wrongfully omitted from the subsequent roll without any notice to these voters and without the knowledge of the petitioner and this was done by the Hindu officials to help the respondent No. 1 and harm the petitioner; the petitioner purchased a printed copy of the electoral roll from the district Election Office, Budaun, on 25th March 1953 for this election and is alleged also that this copy was found to be useless as many changes were subsequently made in the printed copy. All this is denied on behalf of the respondent. We have given the matter our best consideration and in our opinion no such irregularity has been made out. The Representation of the People Act, 1950 and the Representation of the People Rules, 1950 contain provisions for the annual preparation of the electoral roll and for its revision and correction in special cases and there is nothing on the record to show that these provisions were not complied with in the case of the electoral roll of this constituency; it must, therefore, be presumed that the electoral roll was prepared, revised and corrected according to law and the final electoral roll on the basis of which the election in question was held must be deemed to be conclusive; we are also doubtful if we have any power to go behind the electoral roll and to enquire generally if any persons have been wrongly or improperly included in it or omitted from it; perhaps we can make the enquiry only if the minority or other disqualification of a particular voter is alleged, but no such allegation has been made in this case, the petitioner or any person interested in the preparation, revision or correction of the electoral roll could have taken the necessary objection at the proper stage, and we do not think that this matter can be agitated by means of an election petition. In any

case we are not satisfied that any such irregularity has materially affected the result of the election. As regards the printed copy of electoral roll purchased by the petitioner, his witness Sri Jamil Khan P.W. 134 Election Head Clerk of Budaun Collectorate, says that the final electoral roll was complete in December, 1952 and its printed copies were received in the District Election Office from the Government Press on 23rd March 1953; the printed copies had to be corrected by comparison with the original, but the petitioner purchased his copy from the office on 25th March, 1953 before this comparison and correction could be made, and so it was without the necessary corrections and we see no good reason to disbelieve Sri Jamil Khan on this point. Perhaps the petitioner was in a hurry to secure a copy of the electoral roll for his election campaign and had not enough patience to wait for the comparison and correction and he himself is responsible if any clerical corrections made in the printed copies after comparison with the original are not to be found in his printed copy; in any case we are not satisfied that this has in any way materially affected the result of the election. Our finding, therefore, is that the petitioner has not been able to prove to our satisfaction any irregularity materially affecting the result of the election; and this disposes of issue No. 15.

33. Issue 11.—Use of vehicles by a candidate or his agents for carrying electors to polling station on the polling day is a major corrupt practice under Clause (6) of Section 123 of the Representation of the People Act, 1951. The Petitioner alleged in paragraph 4(c) of the petition that the respondent and his workers and agents resorted to this corrupt practice on a wide scale throughout the constituency. List E accompanies the petition in which details of this corrupt practice are given. There were in all 81 polling stations—14 in the rural area and 7 in Budaun proper. It is alleged that at all the seven polling stations of the city as also at seven out of 14 rural polling stations the respondent or his men carried voters on motor vehicles on the polling day. The number of vehicles alleged to have been used for the purpose is 15 out of which registration numbers of 14 vehicles have been given and it is alleged that one truck was also used the registration number of which was not known. Besides the respondent 23 persons are named in the list who are alleged to have procured the vehicles for the said use. The respondent in his written statement denied the allegations made in the petition. It may be noted that out of the vehicles mentioned in list E three at least admittedly belonged to the respondent himself. In his written statement he said nothing about these vehicles. At the far end of the recording of evidence when he came in the witness-box the respondent stated that all the three lorries belonging to him were kept in the garage on the election day and that the same were not even taken out to ply on hire on the prescribed routes.

34. From the side of the petitioner 66 witnesses were produced to prove the allegations, and to corroborate some of the witnesses some complaints made to the authorities and some photographs taken at the spot on the election day have been produced.

The witnesses produced represent every caste and community and some of the witnesses are men of status. Four of the petitioner's witnesses claimed to be workers of the respondent during the election days, one was worker of the Praja Socialist Party, 21 were workers of the Petitioner and the rest were independent witnesses who were either electors or had gone to the polling stations to see the fun on the election day.

35. From the side of the respondent some of his workers and some others were examined. They gave negative kind of evidence which obviously has little evidentiary value. Some members of the election staff who were on duty at different polling stations came in the witness box and stated that they did not see voters being brought on vehicles. But their evidence too is of little value because they were all the time absorbed in their work in the polling stations. They had no occasion or reason to see as to what was going on in camps of the candidates and beyond. Some members of the police force and of the election staff who were touring the constituency on the election day were examined from the side of the respondent. They too stated that they did not see voters being carried on motor vehicles. In fact their main concern was to see that the law and order was maintained and that the voting was smoothly going on in the polling stations. Moreover, good many polling stations were on the pucca roads connecting big towns on which lorries and buses plied on hire. The officers did not think it worth while to stop such buses and to enquire if the passengers were voters. If any such attempt would have been made the workers on the

vehicles would have duped them by making different kinds of statements. Our attention was drawn to Section 133 of the Act in order to show that the authorities were empowered to prosecute the guilty persons but it was not easy to do so. It required lot of evidence of complicated nature and none of the officers had time to trouble himself about this matter. Moreover, those who were courageous enough to commit this major corrupt practice would have been well prepared to meet this contingency. There is one instance on the record when on a complaint regarding a truck enquiry was made. The truck was found stranded on the road without any persons present there, not even the driver or the conductor. The officer who made enquiry was told that engine of the truck had burst and that the truck was lying there since several days.

36. Before we proceed to deal with the evidence polling stationwise it is proper to deal with the evidence of the respondent's side in respect of the four photographs of different motor vehicles alleged to have been taken at polling stations on the polling day. Ex. P3 is the photograph of a truck alleged to have been taken at the Normal School polling station. Ex. P16 is the photograph of a car—UPC-56 also taken at the Normal School. Ex. P15 is photograph of a lorry taken at the Government High School the registration number of which is said to be UPC-139. Ex. P16 is the photograph of a car No. UPC-68 also taken at the Government High School. Besides other evidence the photographer P.W. 125 was produced and he stated that all these photographs were taken on one film in the camera on the polling day. The defence was that the photograph Ex. P13 was taken subsequent to the elections for the purposes of this election petition at a time when the vehicle was about to start on its prescribed route from Budaun to Dataganj, and regarding the truck the photograph of which is Ex. P3 it was alleged that it was taken during the Municipal elections which took place subsequent to the election in question. Regarding the other two photographs (Ex. P16 and P18), there is no suggestion from the side of the respondent as to how the same came into existence if not in the way alleged from the side of the petitioner. So far as the allegation of photograph, Ex. P3, having been taken at the time of the Municipal elections is concerned, it has no force because carrying of voters in vehicles is no corrupt practice under the law relating to the Municipal elections. Therefore, there was no occasion for taking photograph of the truck at that time. It is not suggested that this photograph was taken by the petitioner at the time of those elections in order to use the same for this petition. The respondent's allegation regarding the photograph, Ex. P15, is equally groundless. From the side of the petitioner it was proved that one Sridhar was in the photograph standing by the side of the lorry. Sridhar was examined from the side of the respondent as R.W. 22. He admitted that it was he who was seen in the photoprint standing by the side of the lorry. He, however, stated that the photograph in question was not taken at the time of the election in question but was taken six months prior to his coming in the witness box. He repeatedly stated this during examination-in-chief and cross-examination. The statement was recorded on March 5, 1953. Therefore, according to him, the photograph was taken sometime in September 1954. But the photographs were filed in court in February 1954. It is quite manifest that Sridhar made a palpably false statement. Another witness Reghubar Dayal (R.W. P2), was produced about seven weeks after Sridhar in order to corroborate him. He stated that the photograph Ex. P15 was taken 6 months after the election. In this way he tried to bridge the discrepancy about time made in the statement of Sridhar. But he bungled over another point. He stated with definiteness that at the time of the taking of the photograph Sridhar was inside the lorry and not outside it while in fact he was outside the lorry as pointed out above. It is, therefore, clear from what is said above that the respondent's version about the origin of these photographs is totally false. There is, however, one place of circumstantial evidence which puts an end to the whole controversy. There are six photographic prints on the record and the witnesses of the petitioner stated that all the six were taken on the election day. The photographer of the petitioner's side further stated that all the six were taken on the same film of the camera. The negatives have been produced and are Exs. P21 to P26. A photographer (R.W. 73), was examined from the side of the respondent. He was asked in examination-in-chief about the use of the film in the camera of the photographer who photographed the prints Ex. P3, P15, P16 and P18. He definitely stated that all the four photographs of the motor vehicles were drawn on one film. As this was so, it gives a lie to the suggestion that photograph, Ex. P15, was taken 6 months after the election i.e. sometime in November 1953 and the photograph, Ex. P3 was taken at the time of the Municipal elections which took place sometime in October 1953. It would be too much to suppose that by adopting some contrivance the same film was used at different time, with a gap of several weeks. So the defence story of the coming into existence of the questioned photographs holds no water at all. Similarly there was some

controversy about the body of the lorries. It has come in evidence that lorries are of two types. Some are of Haldwani make and some of Meerut make. Witnesses stated that the difference lay in the wooden frame work of the frontage of the vehicles. At the time of arguments it was argued from the side of the respondent that the difference in the two types lay in the frontal projection of roof. This is a point which was not stated by any of the witnesses. Any way subsequent alteration of body for the purposes of the case cannot be ruled out. This point pressed from the side of the respondent has no force. It was also argued from the side of the respondent that the same lorries are said to have carried voters to the rural polling stations as are said to have carried voters to the city polling stations. According to respondent this was improbable. We, however, see no improbability in it. Distances are not much for motor vehicles and some of the polling stations of the rural area were connected with the city by pacca roads and also some of the rural polling stations such as Arifpur Nawada and Majhia were in the suburb of the city. In the heat of the election campaign on the day of the poll it is not at all strange that the motor vehicles were so used.

37. It may, however, be noted that weakness or falsity of the defence cannot go to prove the petitioner's case. The petitioner has to prove his case beyond any reasonable doubt. While noticing the evidence of the petitioner's side we shall not base our finding merely on oral evidence unless the witness has fared well in the witness-box and the oral testimony finds corroboration from some documentary evidence of contemporaneous nature or from some strong circumstances. In case of workers or agents of the petitioner, whatever their status or position, we shall not accept their evidence if it is not corroborated by other satisfactory evidence. While not placing reliance on mere oral evidence we should not be understood to have disbelieved the witnesses; we shall not consider such evidence of enough weight for unseating a successful candidate. It is with the above general remarks in the background that we proceed to consider the petitioner's evidence polling station wise. We shall first take up the seven rural polling stations which are Dinawar, Puthi Sarai, Amgaon, Klsarwa, Ghatpuri, Majhia and Arifpur Nawada.

38. *Binawar*.—Five witnesses were produced by the petitioner in respect of this polling station. They are Kalyan Singh, a voter (P.W. 1), Kallu agent of the petitioner (P.W. 2), Zalim Ram allegedly worker of the respondent (P.W. 3), Kishan Lal a voter (P.W. 114), and Charan Singh allegedly worker of the respondent (P.W. 115). These witnesses do not give registration number of any of the lorries which, according to them, brought the electors. They stated about two lorries one of orange colour and the other of green colour. The witnesses do not give satisfactory details of the lorries. This is true that admittedly lorries of the respondent were of orange colour but in the absence of satisfactory details it is not possible to fasten the respondent with the guilt. Therefore, the allegation in respect of this polling station is not satisfactorily proved.

39. *Puthi Sarai*.—This polling station is about 12 or 13 miles from Budaun proper. Sukha Singh a voter (P.W. 11), Rama Dass polling agent of the petitioner (P.W. 12), Radhay Shyam a voter (P.W. 13), Himmat Singh a voter (P.W. 14), Jandail Singh a voter (P.W. 15), and Bihari polling agent of the petitioner P.W. 21, were produced to prove the use of motor vehicles on the polling day at this polling station. They stated that a lorry of orange colour brought voters to the polling station. One of the witnesses P.W. 12, who was polling agent of the petitioner further stated that the registration number of the lorry was UPO-146. Ram Dass (P.W. 12), stated further that he verbally complained to polling officer of booth No. 1 and Bihari (P.W. 21), also speaks of verbal complaint. From the side of the respondent Ranjit Ram (R.W. 29), Chundi Lal (R.W. 31) and Pt. Sri Niwas the respondent (R.W. 89), were produced. The first was at the polling station upto 12 A.M. and the second was there upto 4 P.M. They stated that no voters were brought to the polling station on motor vehicles. The respondent merely stated that UPO-146, which belonged to him remained in the garage on the polling day. The statement of the respondent is far from true as we shall show later on and the respondent's witnesses give negative kind of evidence. We, however, consider the petitioner's evidence on this point below the mark. No written complaint was made although in the natural course of the polling agents should have done so as was done at other places. We find that the allegation has not been proved to our satisfaction.

40. *Amgaon*.—Five witnesses were examined from the side of the petitioner in respect of this polling station. Ne Ram (P.W. 27), stated that he went to the polling station to vote on an orange coloured lorry. Girdhari Singh (P.W. 68),

stated about an almond coloured truck. Gulab Singh (P.W. 84), stated about a lorry of yellow colour and truck of almond colour. Badulli of Khonak (P.W. 92), stated having seen a lorry and a truck both belonging to Pt. Sri Niwas taking voters of his village. He does not give colour or registration number of any of the two vehicles. Irshad (P.W. 99), stated having seen a truck 3 furlongs from the polling station bringing voters of Pt. Sri Niwas. He, too, does not give colour or registration number of the truck. Some witnesses were produced from the side of the respondent in rebuttal. However, evidence of the petitioner's side is not weighty enough for fastening the guilt on the respondent.

41. *Kesarwa*.—Three witnesses were examined to prove the allegation relating to this polling station. Puhni (P.W. 42), stated about a lorry of white colour with green stripes and a truck of green colour. Sohan Lal (P.W. 90), also stated the same thing. Manohar Singh (P.W. 112), stated about lorry of white colour. Two of the witnesses stated that Badri Prasad of Shitabnagar was also in the lorry. This Badri Prasad was examined as R.W. 84. He denied having taken the voters on lorry. The necessary details of the vehicles are wanting. The registration number of none of the vehicle is given. Evidence falls short of the standard fixed by us.

48. *Ghatpuri*.—The petitioner examined three witnesses to prove the allegation relating to this polling station. Two of them Deo Datt Sharma (P.W. 20), and Chunni Lal (P.W. 154), were polling agents and workers of the petitioner and the third Tejji Ram (P.W. 110), was a voter. The first two gave registration number of the lorry as UPO-134 and colour as upper part green and lower part yellow. The third witness does not give registration number and gives the colour as yellow. They stated that the lorry made 3 or 4 trips and brought voters of Pt. Sri Niwas. Chunni Lal stated that he verbally complained to the Presiding Officer when he first saw the lorry bringing voters. The officer told him that he would see to it but in fact he did nothing. The matter was not pursued further and the witness concerned could not give any reason as to why he did not make a written complaint. In rebuttal Ujagar Singh (R.W. 55), who was respondent's polling agent stated that no voters were brought on vehicles. The lorry in question belonged to Raghubir Saran Rastogi (R.W. 38), who stated that his lorry was not used for carrying voters to the polling station and that it was on the polling day running on the prescribed route. One of the two polling agents examined from the side of the petitioner is a graduate and the other is an M.L.A. whereas Raghubir Saran Rastogi is without doubt deeply interested in favour of the respondent. It is difficult to discard the evidence of the two polling agents of the petitioner but the fact remains that they were not only polling agents but also workers of the petitioner and no reason is given as to why no written complaint was made. There is no satisfactory corroboration of the evidence of these witnesses. Looking at the evidence in the light of the above observations it appears proper that benefit of doubt should be given to the respondent. We hold, therefore, that the allegation is not proved to the hilt.

43. *Majhia*.—Evidence of the petitioner in respect of this polling station consists of 9 witnesses. Bobardhan Singh (P.W. 31), is of Nagla Sharqi. He is the son of Rukam Singh (P.W. 81), and is President of the Kunwargawan Congress Committee and in the pre-partition days had been to jail for his political activities. During the election days he worked for the petitioner and on the polling day he was his polling agent at this polling station. He stated that two motor lorries brought voters of the respondent to the polling station on the polling day. He does not give colour of the lorries but says that one was UPO-319 and the other UPM-225. According to him each vehicle made 4 or 6 trips. The witness stated that he complained of it to the Presiding Officer verbally but to no effect. Itwari of Nagla Sharqi (P.W. 32), went to the polling station to cast his vote. He was there from 11 A.M. to 3 P.M. He stated he saw one lorry making one trip with voters of the respondent. He named 4 or 5 villages voters of which were brought on the lorry. As regards colour of the lorry he stated that front was red and back yellow. Komil of Maihia (P.W. 39), was a voter. He was at the polling station from 8 to 12 A.M. He saw two lorries—one of orange colour and the other green bringing voters of the respondent to the polling station. He named four villages the voters of which were brought on those lorries. He also named several voters who came to the polling station on those vehicles. Punni of Majhia (P.W. 60), was also one of the voters. He was at

the polling station from 8 to 12 A.M. He stated about two lorries—one orange and the other green—which were bringing voters of the respondent to the polling station. He also named the villages and the voters. Kunwar Sen of Lakhnampur (P.W. 61), is panch of the Panchayati Adalat of Nagla Sharqi. He too stated about two lorries—orange and green—which brought voters of the respondent from the villages which he named. Pukhi, (P.W. 62), stated that he was taking voters of the respondent to the polling station. He stated that he was appointed respondent's polling agent 3 or 4 days prior to the day of polling but that he did not work as such on the polling day. He was at the polling station from 7 A.M. to 6 P.M. He saw two lorries—one of almond colour and the other of green colour—bringing voters of the respondent whom he used to lead to the polling station. Prahlad Singh, (P.W. 67), is also Panch of Panchayati Adalat of Nagla Sharqi. He went to cast vote and was at the polling station from 9 A.M. to 1 P.M. He, like other witnesses, stated about orange coloured and green coloured lorries which were bringing voters of the respondent. Rukum Singh, (P.W. 81), is a veteran Congressman and was almost a jail bird during pre-partition days for his political activities. He was an M.L.A. for about 8 years prior to partition. He also worked as Chairman of the District Board in 1947. He was worker and polling agent of the petitioner though he did not actually work as polling agent. His polling station was Majhia where he went to cast his vote. During the course of this visit he saw one lorry load of the respondent's voters of village Lakhnampur. He does not give the registration number or colour of the lorry which brought voters of the respondent. The last witness of the series was Ram Charan Lal of Nagla Sharqi (P.W. 91). He was a voter and was at the polling station from 9 to 12 A.M. He stated that two lorries—one yellow and the other light green—were bringing voters of the respondent. He further stated that one of the lorries was driven by Net Ram of Mohalla Panwari who admittedly was driver of the respondent.

44. The respondent examined good many witnesses in rebuttal. Rup Chand, (R.W. 7), was Assistant Presiding Officer at Majhia. He was a Sales Clerk in Budaun Collectorate during election days. He stated that he did not see voters being brought on motor vehicles. He is right because the voters were made to alight behind a bush. Though the petitioner's witnesses were not asked as to whether there was or was not a road leading upto that bush, this witness was made to state that there was no road leading upto the bush the existence of which on the election day is admitted by the witness. He was cross-examined about the geography of the place and it appears to us that the witness has an imperfect recollection of the things outside the polling station and this is but natural. The evidence of Sri S.L.S. Kumayan (R.W. 21), was relied upon. He was and still is District Election Officer and toured the constituency on the day of polling. He stated that no case of the carrying of voters on motor vehicles was brought to his notice in the course of his round. This is a statement too general to have any evidentiary value in respect of any particular polling station. Similarly the statement of Sri S. P. Pandey (R.W. 69), was relied upon. He was Dy. S.P. during election days. On the polling day he was deputed in the rural area with Binawar as his headquarters. He stated that he did not see voters being carried on motor vehicles. But this general statement is of no value particularly when he stated that he did not remember having visited Majhia during his round. Meharban Singh (R.W. 34), and Sia Ram (R.W. 37), were produced to state that they were the voters named by the petitioner's witnesses. It is not proved that they are the very same persons who were named by the petitioner's witnesses. These witnesses stated that they went on foot to the polling station to cast their vote. One Vishnath Singh (R.W. 57), was produced to state generally that no voters were brought to the polling station on motor vehicles. Hakim Narendra Mohan, (R.W. 7C), also stated in the same strain but he was a staunch supporter of the respondent and his testimony on the point cannot be relied upon. Similarly Net Ram (R.W. 59), was made to state that he did not carry voters to the polling station at Majhia. He was admittedly driver in the service of the respondent during election days and on polling day he was working as such. But he stated that he was carrying the respondent on car from place to place. Little reliance can be placed on the evidence of this witness. As stated by Tahir Husain, P.W. 156, the lorry No. 319 was of almond colour and belonged to Sohan Pal of Muria and the lorry No. 225 belonged to Raghubir Saran and was of green and yellow colour. Both the owners were examined by the respondent. They are R.W. 28 and R.W. 32, respectively. They stated that their lorries did not carry voters at all.

45. We have noticed above evidence of the parties in some detail. The respondent's evidence on the point does not go satisfactorily to rebut the evidence

adduced from the side of the petitioner but there are certain flaws and shortcomings in the evidence of the petitioner which make his case doubtful. As pointed out above the witnesses give different colours. This is true that the colours given by the witnesses can be mistaken one for the other but too much repetition of the orange colour which was colour of the respondent's vehicles smacks of tutoring. There are two witnesses of the petitioner's side whose testimony should have been accepted in the ordinary course. They are Gobardhan Singh and his father Rukum Singh. Both of them however, were workers of the petitioner and we have in the beginning fixed a standard for judging and weighing evidence of such witnesses. We pointed out there that evidence of workers would be accepted only when it finds strong corroboration from other evidence of satisfactory nature. Here the evidence of these workers is corroborated only by oral evidence. Gobardhan Singh, no doubt, gave registration number of the vehicles but evidence that the voters on those vehicles were being carried at the instance of the respondent or his agents and workers is wholly wanting. Some names of those workers who carried voters to the polling station were given by the witnesses but those names do not find place in the petition or in the lists accompanying it. Therefore, finding the case doubtful on the point we hold that the petitioner could not prove satisfactorily his allegations in respect of this polling station.

46. *Arifpur Nawada*.—The petitioner examined 6 witnesses in respect of this polling station. They are Ghulam Mujtaba (P.W. 26), Nanney Lal (P.W. 28), Kallu (P.W. 65), Toti (P.W. 66), Badan Singh (P.W. 144), and Pran Sukh (P.W. 152). Ghulam Mujtaba stated that respondent's voters were brought in two motor lorries. He does not give colour or registration number of the vehicles. He named certain persons who were brought on those lorries. Two of the named persons, Pearey (R.W. 48), and Shankar (R.W. 49), were produced from the side of the respondent. They stated that they and others went on foot and not on motor vehicles. Nanney Lal stated about two lorries without giving colour or registration number. Kallu gave colours as orange and green. He named certain voters who were brought on motor vehicles out of whom Gulab Singh (R.W. 62), Badri (R.W. 79), and Kallu (R.W. 82), stated that they went to the polling station on foot and not on motor lorry. Toti stated about lorries of orange and green colour. Sri Badan Singh, M.P. was a very important witness. He was, however, a worker of the petitioner. Hence according to the standard fixed by us in the beginning his testimony will not be accepted unless corroborated. There is no satisfactory corroboration. He stated that he informed a Circle Inspector of Police about the carrying of voters on motor vehicles. He does not remember name of that Inspector. When asked as to why he did not complain to the Presiding Officer, he replied that it did not occur to him. In his presence the Inspector went to make enquiry but without waiting to know the result of enquiry he went away elsewhere. It appears to us that the information of Sri Badan Singh that the voters on the lorries were of the respondent was based on hearsay. It was perhaps to ascertain the truth that he complained to the Inspector but he himself did not go to the place with the Inspector and without knowing result of the enquiry he left the place. The last witness of the series was Pransukh (P.W. 152). He stated that he was worker of the respondent and that he was sending voters on motor vehicles to the polling stations. He gave registration number of lorries carrying voters to Arifpur Nawada and to Government High School. If his statement is read with reference to the names of the mohallas voters of which he was sending to the polling station it will appear that the lorries Nos. 2363 and 1768 were carrying voters to Nawada. Tahir Husain (P.W. 156), gave colour of lorry No. 2363 as almond but he did not state about lorry No. 1768. It cannot, therefore, be said as to what the colour of this lorry was but certainly it was not orange because it was the colour of the respondent's vehicles and lorry No. 1768, did not belong to the respondent. This witness did not give the colour of the vehicles and other witnesses did not give registration number. Under the circumstances it cannot be said that the other witnesses corroborate Pransukh or *vice versa*. The evidence in respect of this polling station is not upto the mark. We hold that the allegations in respect of this polling station are not proved satisfactorily.

47. So far we have dealt with the seven polling stations of the rural area at which the commission of the corrupt practice of the carrying of voters to the polling stations on motor vehicles was alleged to have been committed and judging the evidence from the standard fixed by us we have come to the conclusion that the petitioner has failed to prove satisfactorily his allegations in respect of those polling stations. We now proceed to deal with the seven polling stations of the city.



48. *S. K. Inter College*.—Six witnesses were produced to prove the allegations in respect of this polling station. Prem Narain Saksena, (P.W. 22), stated that he saw voters of the respondent being brought to the polling station on two motor vehicles the registration numbers of which were UPO-156 and UPO-145 Mohd. Husain, (P.W. 131), and Damodar Dass, (P.W. 146), both were polling agents of the petitioner. They also stated about the aforesaid motor vehicles. Anand Swaroop Saksena, (P.W. 151) was also a polling agent of the petitioner. Besides the aforesaid lorries he adds one car U.P.M.-56. The petitioner, (P.W. 158), stated only about the lorry No. UPO-145. Tota Ram, (P.W. 103), was a voter. He stated that he saw female voters of the respondent being carried to the polling station on a lorry. He does not give registration number or colour of the vehicle. Several witnesses were examined in rebuttal but it is unnecessary to deal with their statements because we find that the petitioner's evidence is not upto the standard fixed by us. Out of the six witnesses, three were polling agents of the petitioner. There are only two witnesses who corroborate the version given by the petitioner and his polling agents. One of them had gone to the polling station only to see the fun. He, however, stated that he noted down the registration numbers and colours of the vehicles and also that he managed to remember the same. The other witness does not give satisfactory details of the lorry. We, therefore, find that the petitioner failed to prove satisfactorily his allegation in respect of this polling station.

49. *S. K. School*.—The petitioner and two other witnesses stated about the carrying of voters to this polling station on motor vehicles. The two witnesses were Hamid Husain (P.W. 147) and Hikmatullah (P.W. 148). Both of them were polling agents and workers of the petitioner. Hamid Husain stated about lorry UPO 28 and Hikmatullah and the petitioner stated about lorry UPO 168. In case of this polling station also it is unnecessary to refer to the respondent's evidence because the petitioner's evidence is below the standard fixed by us. There is no corroboration. We find that the petitioner has failed to prove satisfactorily his allegations in respect of this polling station.

50. *Town Hall*.—Besides the petitioner there are three very important witnesses produced about carrying of voters in motor vehicles by the respondent to this polling station on the polling day. They are Sri Rukum Singh (P.W. 81) a veteran Congressman and an ex-M.L.A., Sri Karan Singh M.L.A. (P.W. 149) and Sri Kesho Ram M.L.A. (P.W. 155). They are all Congressmen of standing and were workers of the petitioner at the election. The first and third do not give registration numbers or colours of the vehicles used while the second gives the registration number as 146. These witnesses were cross-examined at some length and they stood the test well. We would have accepted their testimony but for the standard which we have fixed and which standard appears to be salutary in an election case. There is no satisfactory corroboration. This is true that there is complaint Ex. P48 which was given by the petitioner to the Presiding Officer about the use of motor vehicle No. 146 for carrying voters of the respondent. But this complaint too lacks independent corroboration. In view of what is said above it is not necessary to discuss the evidence of the respondent. We find that the petitioner's allegation in respect of this polling station has not been proved satisfactorily.

51. *Junior High School, Sotha*.—Krishna Lal (P.W. 80), Rukum Singh (P.W. 81), Nehal Chand Sharma (P.W. 88) and Bhommi (P.W. 105) were produced to prove the petitioner's allegation in respect of this polling station. A lorry and a truck are alleged to have been used. A photograph Ex. P3 of the truck was also taken. The oral evidence suffers from the same drawback as was pointed out in case of the witnesses of the Town Hall. The witnesses are either polling agents or workers of the petitioner. So far as the photograph is concerned, it is of a truck. In list B of the petition a truck has been mentioned but its registration number is not given therein. Evidence has been adduced to show that the truck was No. 1477 and that it belonged to the respondent. Tahir Husain (P.W. 156) gave colour of that truck as light green. But Krishna Lal (P.W. 80) gave the colour of the photographed truck as clay. Therefore, the photographed truck cannot be the truck No. 1477. No other truck having been mentioned in list E evidence in respect of the clay coloured truck cannot be accepted. Therefore, the petitioner's evidence falls short of the mark and we hold that the petitioner could not satisfactorily substantiate his allegation in respect of this polling station.

52. *Sarai Faqir*.—Seven witnesses were examined to prove the petitioner's allegations in respect of this polling station. Nanney (P.W. 34) stated having gone in a yellow coloured lorry of the respondent on which voters of the respondent were taken to the polling station on the polling day. When asked as to why he thought that the lorry was of the respondent he stated that people were

saying this. He named certain persons who were with him in the lorry. One of the persons named by him was Roshan. One Roshan (R.W. 88) was produced from the side of the respondent. He stated that he went to the polling station on foot and not in a motor vehicle. Ishri (P.W. 35) stated to have gone to the polling station in a yellow coloured lorry. He also named some of the persons who according to him had gone to the polling station in the same lorry. Two of the persons named were Beni and Dambar. Two persons of the same name were produced from the side of the respondent. They were Beni (R.W. 86) and Dambar (R.W. 85). They stated that they went to vote on foot and not on motor lorry. Nand Ram (P.W. 87) was worker of the petitioner as stated by Dori Lal (P.W. 89). He stated about the carrying of voters in an almond coloured lorry. Dori Lal (P.W. 89) was a Congress worker. He stated about almond and yellow coloured lorries. Tej Ram (P.W. 96) stated about a yellow-coloured lorry. He was a voter. Itrat Husain (P.W. 104) stated about two lorries one orange-coloured driven by Fazal Majid and the other almond-coloured driven by Nasiruddin. He too was a voter. Last witness of the series was Sattar Bakhsh (P.W. 157) who was polling agent of the petitioner. He stated about the lorry UPB-945. The witnesses give different colours, some yellow, some almond and some orange, while in fact as stated by Tahir Husain P.W. 156 UPB-945 was of white and red colour. Three of the witnesses were workers and agents of the petitioner while the rest were voters. The evidence produced in rebuttal need not be discussed as in our judgment the petitioner's evidence is not weighty enough for a finding in his favour. We hold accordingly.

53. *Normal School*.—The petitioner examined five witnesses to prove his allegation in respect of this polling station, and two photographs one of the truck and the other of a car were also proved. We may point out at the outset that we are not going to take any notice of the photographs. Car No. 56 is not mentioned in the petition. Hence evidence in respect thereof cannot be considered. A truck has no doubt been mentioned in list E but it is mentioned therein that the number of the truck was not known. Subsequently during the course of evidence it was stated by the witnesses that the registration number of the truck was 1477 and that it belonged to the respondent. There being no mention of this fact in the pleadings of the petitioner the respondent was taken by surprise. Hence under the circumstances given above evidence in respect of the truck also cannot be considered. There remains thus only the oral evidence. It consists of five witnesses. Bhuppi (P.W. 69) was a voter. He stated about a lorry of orange colour and a truck of green colour. He did not give registration number of either of the two. Rukum Singh (P.W. 81) stated that he saw voters of the respondent being brought on lorry to the polling station. He does not give registration number or colour of the lorry. He was a worker and polling agent of the petitioner. Sri Fakhre Alam (P.W. 129) was a polling agent of the Socialist candidate. He stated that he saw voters of the respondent being brought to the polling station on lorries. Taslim Ahmad (P.W. 141) was worker and polling agent of the petitioner. He stated about a lorry of orange colour—the registration number of which, according to him, was 201. He also stated about car No. 56. Last witness on the point was Ramesh Chandra (P.W. 145). He was polling agent of the petitioner. He stated about a lorry, a car and a truck. As shown above three of the witnesses were workers or agents of the petitioner. Out of the remaining two Bhuppi was a voter and Sri Fakhre Alam was polling agent of the candidate of the Socialist Party. These witnesses did not give sufficient details of the lorry. According to Bhuppi its colour was orange. Sri Fakhre Alam did not give the colour. None of them gave registration number. Taslim Ahmad stated about the lorry No. 201. According to Tahir Husain (P.W. 156) lorry UPM-201 belonged to a person other than the respondent and he gave its colour as almond. Thus it is clear that the petitioner's evidence is lacking in satisfactory details. It is not upto the standard fixed by us. In this view of the matter it is not necessary to discuss the defence evidence. We find that the petitioner failed to prove satisfactorily his allegation in respect of this polling station.

54. *Government High School*.—The petitioner's complaint about this polling station was that the respondent's voters were brought there on the polling day on a lorry, a truck and a car. The lorry and the car were photographed. We have already pointed out that we are not prepared to consider evidence about the truck because of its ambiguous description in list E. In that List vehicle UPO-168 has been mentioned twice. When the evidence of the petitioner was being recorded, this mistake was discovered. The petitioner gave an application stating that the vehicle UPO-168 was typed twice by mistake by the typist and that in fact there were two vehicles one of which was No. UPO-168 and the other UPO-68. He prayed for amendment of list E for this correction. The application is on the record but no order allowing the amendment was made. There being no amend-

ment of list E the respondent is taken by surprise when evidence in respect of the car UPO-68 was produced. Though photograph of this car was taken, it is not possible under the circumstances given above to take into consideration evidence in respect of car UPO-68.

55. There remains the case of lorry UPO-139 which we shall have to consider in some detail. Evidence in respect thereof produced from the side of the petitioner is of three kinds—oral evidence of some important and very reliable witnesses which finds ample corroboration from contemporaneous documentary evidence. There are two complaints and one photograph. We first proceed to deal with oral evidence. It consists of eight witnesses including the petitioner. Ram Lal (P.W. 82) is a member of the Budaun City Congress Mandal and also a member of the Executive Committee of the District Harijan Sahayak Samiti. He was polling agent of the petitioner at this polling station and was there from 7 A.M. to 6 P.M. He stated that he saw a lorry bringing voters of the respondent from mohallas Nekpur and Jalandhri Sarai and that he complained about it to the Presiding Officer who promised that he would take proper action. But no action was taken. Prem Raj of Jalandhri Sarai (P.W. 86) was a voter. He remained at the polling station from 9 to 11 A.M. He saw one lorry making a trip to the polling station with a load of voters of the respondent brought from Jalandhri Sarai. He gave colour of the lorry as orange and named Net Ram as its driver. Lauki Ram of Jalandhri Sarai (P.W. 93) is a member of the Municipal Board. He stated that two motor lorries visited his mohalla in the morning of the polling day, that one of the lorries was driven by Fazal Majid and the other by Net Ram and that both carried voters of the respondent from the mohalla to the polling station. The witness went to cast his vote at the polling station. He was there from about 9 to 12 A.M. At about 11-30 A.M. he saw the same lorries bringing voters of the respondent from mohalla Nekpur. He further stated that Lalta Prasad, Shyam Lal, Mata Din and Gokul Chand were on the lorries and that they brought the voters. Iqbal Husain of Jalandhri Sarai (P.W. 124) was a worker of the petitioner during the election in question and was his polling agent on the polling day at this polling station. He gave graphic details as to how the vehicles were used by the respondent for bringing voters to the polling station. He stated that at about 8-30 A.M. he saw a lorry of orange colour No. UPO-139 and a truck bringing voters of the respondent to the polling station. He at first verbally complained to the Presiding Officer who asked for a written complaint. The witness at once wrote out a complaint in Urdu and presented the same before the said officer. The witness says that the Presiding Officer refused to entertain the complaint as it was written in Urdu. Thereupon, not knowing Hindi himself, the witness got the complaint written by another Congress worker and signing the same himself made it over to the Presiding Officer. The complaint is Ex. P14. By this time the lorry was gone. The witness further stated that Gokul Chand, Pramatma Saran, Jwala Parshad and Pransukh were bringing the voters and that Net Ram was the driver. In spite of the complaints the lorry continued bringing loads of voters. The petitioner's workers did not rest content with the complaints. They made arrangement for taking photograph of the lorry which was bringing voters. When on its third trip it was photographed in presence of this witness. The photograph is Ex. P15. It was, according to this witness, taken at about 9-30 or 10 A.M. In cross-examination the witness stated that Pramatma Saran was polling agent of the respondent at booth No. 2 where the witness was also polling agent. The witness stated that Pramatma Saran used to go away from the polling station to bring voters from different places. Abdul Wahab (P.W. 125) photographed the lorry No. 139. He stated that he photographed it while voters were getting down therefrom. Sri Fakhre Alam (P.W. 129) is an Advocate practising in Budaun. He is a member of the Municipal Board and Chairman of its Education Committee. He was worker of the Socialist Party candidate and was his polling agent at the Normal School. But he did not confine his work only to that polling station; he was visiting other polling stations as well. During his visits to other polling stations he went to the Government High School polling station where at about 10 A.M. he saw voters of the respondent being brought on a motor lorry. Kumari Maimoonna Begam was polling agent at the ladies' booth there on behalf of the Socialist Party candidate. She complained to the witness about the use of vehicle No. 139 whereupon the witness made her write the complaint which he proves and which is Ex. P 28. Sri Karan Singh P.W. 149 is an M.L.A. and is a legal practitioner. He was worker of the petitioner during elections. His polling station was Government High School where he went at 8 or 8-15 A.M. to cast his vote. He stated that he saw a lorry of orange colour registration number of which was UPO-139 bringing voters of the respondent to the polling station. Pransukh P.W. 152 stated that he was worker of the respondent and that he along with others was carrying voters of Jalandhri Sarai and Nekpur etc. to the polling stations of Arifpur Newada and the Government High School. He stated that

voters were carried in several motor vehicles one of which was No. 139. Last witness of the series was the petitioner himself (P.W. 158). He stated that during his round of polling stations he visited this polling station at about 11 or 11-30 when he saw voters of the respondent being brought on the lorry No. 139. This is the oral evidence produced from the side of the petitioner. It is corroborated by two complaints and a photograph mentioned above.

56. Main criticism levelled against this evidence is that most of the witnesses were workers of the petitioner. This is true and however important personages those workers were we would not have based our finding on their testimony alone because of the standard fixed by us but in case of this polling station there is ample corroboration in the shape of the two complaints and a photograph all of which came into existence contemporaneously. It was argued that when enquiry was made in pursuance of the complaints no vehicles were seen by the authorities. There is nothing strange in it because the vehicles after dropping the voters would not have waited for being inspected by the authorities. The vehicles used to go away at once after dropping the voters. For one of the complaints Sri Fakhre Alam and Maimoona Begam were responsible. Both of them were agents of the candidate of the Socialist Party, Sri Nihaluddin, who was a rival of the Congress candidate. This independent evidence of reliable nature cannot be lightly treated. It was argued from the side of the respondent that Sri Fakhre Alam was brother-in-law of Sri Ali Maqsood who was elected Chairman of the Municipal Board on Congress ticket. Suggestion was that Sri Fakhre Alam came in the witness box to give a false statement under the influence of Sri Ali Maqsood. It is, however, not a fact that Sri Ali Maqsood was elected on Congress ticket. It is well known that the Congress as a party did not take part in the Municipal elections of 1953. It is true that sympathies of the Congressmen were with Sri Ali Maqsood at the time of his election. We, however, do not at all accept the suggestion that Fakhre Alam was out to make a totally false statement merely because his brother-in-law influenced him as he had Congressmen as his sympathisers at the time of his election. In order to belie Sri Fakhre Alam, and Sri Parmatma Saran R.W. 11 was produced. Fakhre Alam stated that he had talk with Maimoona Begam in the verandah of the Government High School where the complaint Ex. P28 was written. Sri Parmatma Saran is employed as a Reader in Budaun Collectorate and was Assistant Presiding Officer at this polling station. He stated that no outsider was permitted to enter even the verandah of the polling station. He was also made to state that Fakhre Alam did not go to the verandah of the polling station on the polling day. We are not prepared to accept this sort of negative evidence in preference to the positive statement of Sri Fakhre Alam.

57. Regarding the photograph the controversy was that it was the photograph not of lorry No. 139 but of lorry No. 145. The reason for this controversy was that lorry No. 139 belonged to the petitioner and that No. 145 to Madho Ram. In this connection the controversy about Haldwani make and Meerut make bodies of lorries had also arisen. Several drivers and owners of lorries were produced from the side of the respondent and photographs of lorries taken during hearing of this case were produced. It is no use entering into any details regarding this evidence because as pointed out elsewhere bodies can be changed at any time and the difference in the two kinds of the bodies as stated by the witnesses is not at all visible or detectable in the photograph produced from the side of the petitioner. An attempt was made from the side of the respondent to prove that the photograph Ex. P15 was taken at some other time. We have discussed this matter in the beginning and found that the respondent produced totally false and concocted evidence on this point.

We gave our best consideration to every bit of oral and documentary evidence produced by both sides. In spite of the fact that we fixed a very high standard for accepting petitioner's evidence, we find that there is no escape possible from the evidence produced relating to this polling station. We do not entertain the least doubt in our mind in the fact that lorry No. UPO-139 which admittedly belonged to the respondent did carry respondent's voters to this polling station. We may point out here that the respondent in the course of his statement stated that on the polling day all his lorries were in the garage and were not even plying on their prescribed routes. This version has been falsified by the petitioner's witnesses and particularly by the witness produced for this polling station. There appears to be a manifest improbability in the version given by the respondent.

58. The question that, now, remains for discussion is how far the respondent is responsible for the commission of this major corrupt practice. It was respondent's own lorry which carried voters to the polling station on the polling day. The respondent's version that his vehicles were in the garage on the polling day

is manifestly false. One of his agents Parmatma Saran was bringing voters on this lorry. Therefore, it was with the knowledge and connivance of the respondent and with the personal knowledge of his agent that this lorry was used for carrying voters. Therefore, the respondent comes with full force within the clutches of clause (6) of Section 123 of the Representation of the People Act because of the major corrupt practice committed at this polling station.

The issue is decided accordingly.

59. *Issue No. 16.*—So far we have disposed of the issues No. 7 to 15 relating to the alleged corrupt and illegal practices and irregularities, and we have found that on behalf of the respondent No. 1 the corrupt practices of Sections 123(6), 123(8) and 124(5) of the Representation of the People Act, 1951, were committed by the use of the respondent No. 1's motor lorry No. UPO-139 for the conveyance of electors to the Government High School polling station, Budaun, on the polling day, by obtaining the assistance of Rai Singh Mukhia of Yusufnagar for the furtherance of the prospects of the respondent's election and by making a systematic appeal to the Hindu electors to vote for the respondent No. 1 and not for the petitioner or respondent No. 2 on grounds of religion and that no other corrupt or illegal practices and no irregularities materially affecting the result of the election have been proved. We have also found that the commission of the corrupt practice of systematic appeal on grounds of religion materially affected the result of the election. We find further that the election of the respondent No. 1 was at least induced, if not actually procured, by these corrupt practices and that all these corrupt practices materially affected the result of the election as in our opinion the number of votes secured by the respondent No. 1 would have been substantially reduced and that secured by the petitioner and respondent No. 2 would have been substantially increased if these practices had not been resorted to. We find issue No. 16 accordingly.

60. *Issue No. 17.*—Under issue No. 16 we have observed that the number of votes secured by the respondent No. 1 would have been substantially reduced and that secured by the petitioner and the respondent No. 2 would have substantially increased if corrupt practices had not been resorted to on behalf of the respondent No. 1. However, any attempt to assess the extent of this decrease or increase would only mean going into the realm of pure speculation and guess, as nobody can say even approximately what would have been the actual position in the absence of these corrupt practices and how many electors would have actually cast their votes and how many of them for each candidate. Further, it is impossible to find out as to how many votes were obtained by the respondent by these corrupt practices. The petitioner claims a declaration that he himself has been duly elected and in this behalf his contention is that but for the votes obtained by the respondent No. 1 by these corrupt practices he himself would have obtained a majority of valid votes; the difference in the number of votes obtained by the respondent No. 1 and by the petitioner is of 2532, but it cannot be said with any reasonable degree of certainty that all these 2532 votes were obtained by the respondent No. 1 by these corrupt practices. Thus the grounds for declaring the petitioner to have been duly elected have not been made out, and this disposes of issue No. 17.

*Issue No. 18.*—The plea of the respondent No. 1 in paras 3 and 4 of the additional pleas of his written statement is that his election was free from all corrupt practices, that he or his agents never committed any corrupt practices intentionally or knowingly, that in fact he had given strict instructions to all his workers and agents to avoid and prevent by all possible means the commission of corrupt practices and that in case any corrupt practice is found proved it should be ignored on the ground of absence of *mens rea*. Certainly in his pleadings the petitioner did not allege very definitely and specifically that the corrupt practices found proved were committed by the respondent No. 1 himself; as to the systematic appeal on grounds of religion there is no mention in para. 4(a) of the petition or list A that the respondent made this appeal; in para. 4(e) there is a mention that the respondent No. 1 procured vehicles for the conveyance of electors to the polling stations, but in the corresponding list E we do not find the name of the respondent at all; similarly in para. 4(f) there is a mention that the respondent No. 1 obtained the assistance of persons serving under the Government, but in list F the only mention in respect of Rai Singh Mukhia is that the respondent No. 1 procured and obtained his assistance for the polling day for the polling and there is no mention of the respondent at all in list A in which the questionable activities of Rai Singh are specified. In these circumstances it cannot be held that the respondent himself committed these corrupt practices, but at the same time there can be no doubt at all in the fact that these corrupt practices were committed by

his agents with his full knowledge, consent and connivance; as regards the appeal on grounds of religion, this appeal used to be made on a loud speaker installed at the respondent's house and also it used to be made by his workers who used to go out for his election propaganda in his motor lorries; as to the assistance given by Rai Singh Mukhia we have to remember that this Rai Singh used to go out with his other workers in his lorries for the election propaganda and he also appointed Rai Singh as his polling agent; as to the use of the lorry No. 139 for carrying voters to the Government High School polling station on the polling day we have to take into consideration the fact that this lorry belongs to the respondent No. 1 himself who has deliberately made a false statement that on the polling day it remained in the garage all along and was not taken out at all. The respondent No. 1 has come into the witness box to say that he warned his workers not to do any work in this election which might be illegal or improper, but his acts give a lie to his words; he got the pernicious propaganda made on a loud speaker at his house, he adopted as his polling agent Rai Singh Mukhia who was making the communal propaganda with his other workers in his propaganda lorries and he made his lorry No. 139 available for carrying electors to the polling station on the polling day. His witnesses Hakim Narendra Mohan R.W. 70 and Jhamman Singh R.W. 71 who have come forward to corroborate him on the subject of the alleged instructions to the workers, do not support him fully inasmuch as they say that his instructions were only that nothing objectionable should be said at the time of the propaganda and canvassing; they do not say that the instructions were that nothing objectionable should be done in the election, and we do not think that the respondent gave any such warning or instructions at all to his workers and agents. The corrupt practices in question were committed with the full knowledge, consent and connivance of the respondent; the respondent never gave any orders or instructions to the contrary; these corrupt practices were not of a trivial character and they materially affected the result of the election and there was no question of the respondent No. 1 taking any means for preventing their commission, and in these circumstances we see no ground at all under Section 100(3) of the Representation of the People Act, 1951, to condone them.

62. *Issue No. 2.*—The corrupt practices found proved as above entail a disqualification in respect of the respondent No. 1 under Section 140 of the Act, and the petitioner has prayed for such a disqualification. Section 84 of the Act lays down what relief may be claimed by the petitioner, and a prayer for disqualification of any candidate is not included in this relief, but all this is immaterial for practical purposes as Section 99 of the Act casts a duty upon the Tribunal itself to deal with this matter.

63. *Issue No. 19.*—In view of all that has been said above we find that the corrupt practices of procuring a vehicle for the conveyance of electors to a polling station as defined in Section 123(6), of obtaining the assistance of a person serving under the State Government for furtherance of the election prospects as defined in Section 123(8) and of making a systematic appeal to vote for the respondent No. 1 and refrain from voting for the petitioner and the respondent No. 2 on grounds of religion as defined in Section 124(5) of the Act have been committed by the agents of the respondent No. 1 in this election, that they were committed with the full knowledge, consent and connivance of the respondent No. 1 and that their commission materially affected the result of the election and induced the election of the respondent No. 1. We hold also that there are no grounds at all to condone these corrupt practices under Section 100(3) and we would, therefore, declare the election of the respondent No. 1 to be void in accordance of the provisions of Section 100(2) of the Act. No other corrupt or illegal practices and no irregularities materially affecting the result of the election have been proved to our satisfaction. The corrupt practices proved in this case entail a disqualification in respect of the respondent No. 1 under Section 140 of the Act, and we do not think it proper or necessary to name any other person for disqualification. We would refuse the petitioner the declaration that he has been duly elected. As regards costs we would in the circumstances of the case order the parties to pay their own costs, because the petitioner has not been able to substantiate many of his allegations and also his claim for being declared to have been duly elected has not been recognised. We would dispose of this election petition accordingly.

(Sd.) M. U. FARUQI, *Judicial Member.*

(Sd.) R. SARAN, *Chairman.*

*Per A. Sanyal:—*

This is an Election Petition filed by Sri Asrar Ahmad, a defeated candidate, against Pt. Sri Niwas, the successful candidate and others.

This is a bye-election relating to Budaun North Constituency which is a single member constituency. Though it is not stated in the petition, it was stated at the bar that one Sri Nihaluddin, respondent No. 2, was elected in the General Election, inasmuch as, Sri Asrar Ahmad's nomination was held to be invalid. That election having been set aside the present bye-election took place. I understand that Pt. Sri Niwas was not a candidate from this constituency at the time of the general election of 1952.

In this constituency there are a large number of Muslim voters. According to the petitioner the number of the Hindu and Muslim voters of Budaun city must be half and half. It may be that for this reason the Congress Party selected the petitioner a Muslim for this constituency. Similarly, the P.S.P. party selected Sri Nihaluddin, a Muslim, as their candidate. In the cross-examination the learned counsel for respondent No. 1, Pt. Sri Niwas, suggested that the real cause for the defeat of the petitioner in this bye-election was due to the division of the Muslim votes between the petitioner and Sri Nihaluddin. This suggestion was not accepted by the petitioner. He stated however that the majority of votes secured by him were Muslim votes and similarly most of the votes secured by Nihaluddin were Muslim votes. According to the respondent No. 1 the real cause of the petitioner's defeat is this division of the Muslim votes and not any religious and communal propaganda made by the respondent No. 1.

The petitioner has naturally laid great emphasis on this religious and communal propaganda alleged to have been made by respondent No. 1 and has stated this in his petition in Paragraph 4(a) and list (A) and has put it in the forefront of his attack against respondent No. 1. It is the subject matter of issue No. 7. The counsel for the petitioner has however chosen to argue issues Nos. 7, 8 and 13 together as they are allied matters and I shall proceed in the way it has been argued before the Tribunal. Issue No. 8 arises out of allegations made in paragraph 4(b) and list B of the petition. Issue No. 13 relates to two leaflets Exs. P1 and P2 and the case about these leaflets has been stated in paragraph 4(g) and list G of the petition.

The respondent's learned counsel has sub-divided the petitioner's allegations about communal propaganda under three heads. (1) General and Oral Propaganda, (2) Publication and Distribution of Exs. P1 and P2 and (3) other small matters like exposing the "Choti" etc. I shall deal with No. 1 first. As stated above the religious and communal propaganda alleged to have been made by respondent No. 1 is oral and except for Exs. P1 and P2 there is no document on the record to prove that this oral propaganda was made in this election. The petitioner has relied entirely on oral evidence and has produced a large number of witnesses. The argument of the learned counsel of the petitioner is nothing but cataloguing of these witnesses. The learned counsel of the petitioner has also filed a chart which he has headed as List of Villages and Mohallas of Budaun City where communal propaganda and undue influence has been proved. This list contains 99 places including villages and mohallas of Budaun City and he has also given the number of the petitioner's witnesses who have been examined on this point. The petitioner's learned counsel has further analysed these witnesses and placed them under three categories. Category No. 1 consists of 4 witnesses for the petitioner who were alleged to be workers of the respondent. In the second category there are 24 witnesses who are admitted to be the workers of the petitioner and in the third category there are 120 witnesses who are described as independent persons. We find therefore that out of 158 witnesses produced by the petitioner including himself and some officials, 148 witnesses deposed about this alleged communal propaganda. These very witnesses also depose about other matters which are in issue. These witnesses are, what I may call, 'omnibus' witnesses.

Before I begin to assess the value of these witnesses, it is necessary to state certain undisputed and admitted facts. As stated above the communal and religious propaganda was intensive and extensive. The actual language in which appeal was made is given in list 'A' of the petitioner in the following words. They appealed that for the protection of Hinduism and Cow protection the votes be given to respondent No. 1. They made appeals on such slogans as "Hindu Rashtra Ki Jai", "Gau badh band ho", "It is a sin to vote for the petitioner who is a Muslim", "By voting for a Congress Muslim, Hindu religion is in danger."

The petitioner has verified list A which is divided into 9 parts as follows, "I Asrar Ahmad the petitioner verify that the contents of List A from Nos. 1 to 7 are believed to be true on information and contents of Nos. 8 and 9 are verified to be true on information". I find no difference between these two verifications

and the only interpretation to be put is that the petitioner has no personal knowledge of the allegations made in list A. I shall deal with the slight change in verification made by the petitioner in list B to enable him to depose that he himself actually heard communal propaganda being made by a loud-speaker from the house of the respondent No. 1. Now this verification shows that the petitioner has no personal knowledge of any communal propaganda by respondent No. 1. In the list A respondent No. 1's name does not find a place and not a single witness of the petitioner deposed that respondent No. 1 himself made any such propaganda. The petitioner in his statement says "I started my election campaign from 1st or 2nd April, 1953. I started going to the villages for my propaganda from 5th or 6th April." He says further that he heard Pt. Sri Niwas's election propaganda thrice from loud speaker at his house and this was on 28th and 29th April 1953 and 1st May 1953. He further says "I did not see Pandit Ji's propaganda on any other occasion or at any other place". This election tour continued upto the polling day i.e. 3rd May 1953. It seems to me inconceivable that Sri Asrar Ahmad, a candidate vitally interested in this matter, would not himself see or hear any thing though the propaganda takes place openly and on loud speakers throughout the constituency and in the city of Budaun. The petitioner was asked if he toured his constituency alone or in company with his workers. His answer was that sometimes he toured alone and sometimes he had companions. He mentions the names of Kunwar Rukum Singh, Chunni Lal, Kesho Ram and others but he is unable to say when or where these companies went with him in his tour. He has deliberately left this vague and uncertain to avoid contradiction. For example, some of the persons namely Kr. Rukum Singh, Chowdhri Badan Singh and others have been exempted in the case for the petitioner and they depose that they saw the communal propaganda. It is strange that these elusive propagandists would not be visible to the petitioner but to his companions like Mr. Rukum Singh and others. I have no doubt in my mind that evidence of these witnesses cannot be relied upon to come to the conclusion that there was communal propaganda of the alleged nature. I shall deal in more detail with some of these witnesses alleged to be important.

There is another undisputed fact which must be taken into consideration. On 17th April 1953 Sri D. S. Gahlaut, D. M. Budaun, passed an order under Section 144 Cr. P.C. This order prohibited meetings likely to incite communal feelings or hatred in any public place. This did not apply to meetings connected with the election campaign. My interpretation of this part of the order is that if in any election campaign communal feeling or hatred is incited it will come within the clutches of the order. The order further said that no slogans likely to incite the communal feeling or hatred will be shouted. Further no posters or notices containing matter likely to incite communal feelings or hatred will be published and distributed or displayed in any public place. This order was applicable to residents of Budaun city and persons residing in Budaun district. Now, if we consider the language of the communal propaganda of respondent No. 1, if we consider the publication and distribution of leaflets Exs. P1 and P2, if we consider the slogans on Exs. P1 and P2, they would come within the clutches of this order. We find however that in fact no action was taken against respondent No. 1 or his workers for the contravention of this order. The petitioner who initiated these proceedings and obtained the above order under Section 144 Cr. P.C. says in his statement that this order had no effect and Pandit Ji's propaganda become even more violent. He says further that he took no steps about it because taking any steps would have created communal tension and would have further alienated the Hindu voters from him. The petitioner has indulged in a bit of tall talking and has introduced the name of Pt. Gobind Ballav Pant, the then Chief Minister of U.P. He says that he gave information about respondent's propaganda to him possibly by a letter. He says he must be having a copy of this letter at his house but he has not produced it. He cannot say whether the letter was sent by registered post. He could say all this with impunity because he never intended to call Pandit Pant as witness and he never intended to produce any such letter referred to above. There is one more fact which I forgot to mention. The petitioner in his statement said that he maintained a diary in which he made notes of events from day to day. He says that in his diary he made notes of Pandit Ji's propaganda which he heard himself. This diary has not been produced because it would not have supported the petitioner's case. It seems to me that if the respondent No. 1 had been carrying on propaganda of the nature alleged by the petitioner, the Magistrate or the authorities concerned would surely have taken action under Section 144 Cr. P.C. If the petitioner did not choose to make a complaint, any other persons could have done so and even the Magistrates could take action on their own initiative. This fact gives a lie to the petitioner's case about communal propaganda. These are circumstances which must be taken into consideration in determining whether the communal propaganda of the nature alleged by the petitioner ever took place or not.



From the statement of the petitioner referred to above it is clear that there were documents available to the petitioner which would have shown that communal propaganda was carried on by the respondent No. 1, but these documents have been kept back. I am referring particularly to the letter addressed to Pt. Gobind Ballav Pant in the last week of April in which the petitioner is alleged to have made a complaint about this propaganda. The second is the diary of the petitioner. Then there are various reports and papers in the Congress office at Budaun relating to this communal propaganda. I have no doubt in my mind that these documents except, perhaps, the diary, have no existence and in any case if these documents had been produced they would not have supported the petitioner's case. I am of the opinion that where there are documents alleged to exist to prove a particular fact and they are not produced we should look with the greatest caution on the oral evidence produced to prove those facts. I have already expressed my opinion regarding oral evidence in other election cases and I may repeat again that in a constituency where there are over 70 thousand voters it is not difficult for a party who has money and resources at his command to get one hundred or two hundred witnesses to depose what the party wants.

The respondent has produced some witnesses to prove that there was no such propaganda on behalf of the respondent No. 1. I shall refer to some official witnesses only and they are R.W. 42 Sri Shankar Baksh Singh, Station Officer of Binawar at the time of the election. He says that no report was made at the Police Station Binawar that any breach of the order under Section 144 Cr. P.C. took place. He further says "I had occasion to see the election propaganda of the candidates 4 or 6 times. This propaganda was of Pt. Sri Niwas as well as of the Congress". This witness does not say that the propaganda was on communal lines and no question was put to him in cross-examination. The next witness that I shall refer to is R.W. 74 Sri Malkhan Singh who was Station Officer of Budaun Kotwali during the election. This witness says that there was no election propaganda of Pt. Sri Niwas in front of Budaun Kotwali in which communal feelings were aroused, though it is stated by some of the petitioner's witnesses that there was communal propaganda by Pt. Sri Niwas before the Kotwali. This witness did not see any election propaganda by Pt. Sri Niwas. There is however the positive statement of R.W. 42 who definitely says that he had occasion to see the election propaganda of Pt. Sri Niwas and there was nothing objectionable in the propaganda. There is no reason to disbelieve this witness who is an official and there was no reason for him to side with any party and nothing has been brought out in his cross-examination. In fact, the petitioner's counsel has not argued that this witness is unworthy of belief. I cannot give a go-by to these undisputed and admitted facts which have not been explained by the petitioner and such explanation as has been given is unworthy of acceptance.

I shall now deal with the oral evidence produced by the petitioner in support of this case of communal propaganda by respondent No. 1.

The petitioner's learned counsel has said that four of his witnesses were workers of the respondent No. 1. There is no satisfactory evidence that these persons were really workers of the respondent No. 1. They were simply got at and they say that they were workers. There is no documentary evidence and respondent denies that they were workers. They have been produced to support petitioner's case on matters which could only be within the knowledge of some workers. For example P.W. 152 Sri Pransukh has been produced simply to help the petitioner whose witnesses had said that Ex. P1 and P2 were distributed much before 1st May, 1953 and this witness is made to say that he got these leaflets before they were actually printed and delivered. I attach no value to such witnesses who have been won over.

I shall now deal with about 24 witnesses produced by the petitioner who are admittedly Congress workers and who would naturally support the petitioner's case. One of them is a member of Parliament and four are members of Legislative Assembly; some are members of the Municipal Board and District Board etc. Naturally the learned counsel of the petitioner has laid great emphasis on their statements. I have examined them and I am unable to place reliance on their statements because they are vitally interested in the petitioner. It is worthy of note that some of these M.L.A.'s are Jatavas, some Yadavas and Sri Badan Singh M.P. is an Ahir (Yadav). The petitioner's counsel has given us a chart from which it will appear that out of the witnesses produced by him as many as 43 are Jatavas, 12 are Ahir-Yadavas, 18 Muslims and then there are small number of other castes. The argument of the learned counsel of the respondent No. 1 is that these Jatava and Yadava witnesses come forward to give evidence under the influence of the member of the Legislative Assembly and Parliament and these are

the people who in the name of the Congress, influenced ordinary village people who were mere voters, to say what the petitioner required and the respondent No. 1 did not know most of these voters. These witnesses have made statements which are generally vague and indefinite and further there are discrepancies in the statement which the learned counsel of the respondent has taken us through. I am unable, therefore, to accept unreliable evidence of this nature and discard the undisputed facts and circumstances about which there is no answer by the learned counsel of the petitioner. It has been said by him in arguments. "Witnesses may lie, but circumstances cannot lie". I agree with this observation and I have no hesitation in discarding the oral evidence which in my opinion was prepared for the case and is tainted and partial.

A good deal of argument has been based on Exs. P1 and P2 which are alleged to be part of the propaganda by respondent No. 1. The evidence of Sri Ram Saran Lal Rastogi P.W. 142 shows that these leaflets Exs. P1 and P2 were printed at his press on 1st May 1953, on the order placed by Pt. Ram Narain Vaid who is alleged to be a signatory to these leaflets. The originals of these leaflets are not in existence and the respondent No. 1 has produced a large number of the alleged signatories who deny that they ever put their signatures on any such leaflet. It cannot, therefore, be presumed that any such leaflets were issued over the signatures of the persons whose names find place in the leaflets. The alleged signatories are a collection of all kinds of persons, some alleged to be members of the Hindu Sabha, some of the Jan Sangh, some of the Sanatan Dharm Sabha and members of various kinds of associations namely Sarrafa and Bazaaza and others. There is nothing to show that respondent No. 1 or his election agent or workers got them printed. The person who is alleged to have placed the order is dead. Under these circumstances I am not prepared to hold that the Respondent No. 1 got these leaflets printed and distributed in furtherance of his election. If Pt. Ram Narain Vaid or any other person took it into his head to issue such leaflets it will not be a systematic appeal by the candidate or his agent for the furtherance of his election.

The evidence regarding the distribution of these leaflets Exs. P1 and P2 is almost the same as that of oral propaganda. There is such wide difference between the witnesses as to the time when these leaflets were distributed that even the petitioner's learned counsel had to discard some witnesses. I have already stated above about the class and nature of witnesses and I shall not repeat again. I am of the opinion that these very same witnesses have deposed everything and they cannot be relied upon to prove the allegations made by the petitioner.

I shall just deal with a small matter which shows the zeal of petitioner's witnesses. For example, Sri Fakhre Alam, a practising lawyer of Budaun, has not hesitated to improve upon the case of the petitioner regarding communal propaganda. This gentleman was a worker of Sri Nihaluddin, the P.S.P. candidate, against the petitioner. Now in this case he is a most zealous witness for the petitioner. He says in his statement "Sometimes I saw respondent's workers exposing their *choties* before the voters and entreating them to maintain the prestige of the *choties* by voting for the respondent." Even the petitioner did not allege this in the petition and his witnesses did not say anything about it. I cannot, therefore, place any reliance upon the testimony of such witnesses.

The petitioner has produced another witness Sri Mohammad Bahadur Zaidi P.W. 150. This gentleman was the Squad Inspector in Bareilly those days and Budaun was within his jurisdiction. It appears that the respondent No. 1 had taken permit to ply his motor vehicle outside his route on 21st April, 1953 and 28th April, 1953. The respondent No. 1 had made an application to ply his lorry from 21st April to 27th April 1953 from Budaun to Dhamoura and it is surprising that his lorry is arrested on 21st April 1953 by Mr. Zaidi for plying on Budaun-Bareilly road carrying on election propaganda. Similarly on 28th April 1953 he caught the same lorry on Bareilly-Budaun road carrying on election propaganda. There is no mention of a loud speaker in use though the witness has added it in his deposition. In his record regarding 28th April 1953 he gives the time as 11 A.M. in the register. In his deposition, however, he says as follows, "It is possible that the checking of the motor vehicle on 28th April 1953 may have been done at 11 P.M. and not at 11 A.M. and I do not remember at all whether the checking was in the day or in the night; the checking might have been done in the evening after sunset as I remember it was dark at that time and the head lights were on". It does appear that the register prepared by him giving 11 A.M. as the time is absolutely wrong and he admits it. He is sure about the head lights being on. It is on the entry of his register that a prosecution of respondent No. 1 is pending. I shall not, therefore, express any opinion about the facts of the case but I have great hesitation in accepting the evidence of this witness who can make night the day and who

improves on his statement by saying that there was a loud speaker in this lorry when there is no entry about it in the register. Further nothing has been shown to us that carrying on election propaganda is any offence under the Motor Vehicles Act though this has been shown as an offence in the column of crimes. I could have developed these points and given more reasons to discard the evidence of this witness but I refrain from doing so.

For the reasons given above I hold that the respondent No. 1 did not commit the minor corrupt practice defined in Section 124(5) of the Representation of the People Act and I shall exonerate him altogether. This disposes of issues No. 7 and 13.

As regards issue No. 8 regarding undue influence my learned colleagues have held that the respondent No. 1 is not guilty of the major corrupt practice of undue influence and I agree with them. This disposes of issue No. 8.

*Issue No. 11.*—This issue relates to the major corrupt practice as defined in Section 123(6) of the Representation of the People Act. The allegation regarding this issue is in paragraph 4(e) and list E of the petition. Here also the allegation, if correct, will show that the respondent No. 1 used as many as 15 vehicles which brought voters to the various polling stations throughout the day and, if I may use the same expression, it was intensive and extensive. As many as 14 polling stations are involved, seven in the Budaun city and its suburb and 7 in outlying villages and it is surprising that practically no complaints are made about the use of motor vehicles. The most respectable and important witnesses of the petitioner viz. Chowdhry Badan Singh M.P. and the various M.L.A's see vehicles coming and going with voters but they make no written complaint. They now say in the witness-box that some of them made oral complaints but I am afraid I cannot rely on such statement now made during the hearing of the case. There is another aspect of the case which should not be lost sight of. A number of official witnesses who were making a round of the city on the polling day as part of their duty say that they never saw any motor vehicle bringing voters to the polling stations. In fact some witnesses of the petitioner have said that these officials did see motor vehicles carrying voters. I have no faith in such witnesses who are partisans and supporters of the petitioner as against the officials on whom I have complete reliance. It is inconceivable that the respondent No. 1 would be bringing voters to the polling station before the very eyes of the officials. It seems to me inconceivable that, at least in the city of Budaun the voters would not walk one or two furlongs or even three furlongs to the polling stations and would expect that they would be taken to the polling stations in lorries. It has been argued by the learned counsel of the petitioner that it is not a part of the duty of the Presiding Officers to take notice of the motor vehicles during the election. This argument is erroneous. In the book of Instructions issued by the Government of Uttar Pradesh there is rule 14 in Chapter II which gives powers, duties and functions of the Presiding Officers and in sub-rule 21 of that rule it says that one of the duties is to report to the police officer on duty at the polling station any person committing at the polling station any of the offences under the Election Act and Section 133 of the Representation of the People Act creates an offence for illegal hiring or procuring of conveyances at election. In any case the Presiding Officers could certainly take note if any candidate brought his voters to the polling stations on motor vehicles and it is for this reason that we find that complaints are made to the Presiding Officers in regard to this matter. The fact that the District Magistrate and other Magistrates and the police officers who went round did not see any motor vehicles being used to carry voters to the polling stations for election is almost conclusive of the fact that no motor vehicles were used at all. This evidence cannot be ignored by simply saying that they might not have seen it. In my opinion this evidence of official witnesses far outweighs the oral evidence produced by the petitioner in this case. I may add here that many of these witnesses are witnesses of all other facts alleged by the petitioner in his petition, which have been disbelieved by me for reasons given above. Regarding the use of these lorries I shall refer particularly to 2 cases in which written complaints have been made. I shall first take the case of UPO-139 bus which is alleged to have been used at Government High School polling station. It is said that this bus brought its first load at 8.15 A.M., second load at 8.45 A.M. and third load at 10 A.M. A complaint was made to the Presiding Officer by Sri Iqbal Husain when he saw the first load at 8.30 A.M. He says that at 8.30 A.M. his complaint was verbal and the Presiding Officer asked him to give his complaint in writing. He further says that he gave his complaint in writing but by that time the lorry had gone away. He also says that the Presiding Officer took no action on his complaint. It has been argued on behalf of the petitioner that the time taken in making the

written complaint was about fifteen minutes. This witness says that the second load was brought at 8.45 A.M. This would be exactly the time when the complaint would have reached the Presiding Officer and if it is true that the second load reached the polling station at 8.45 A.M. he could have certainly shown the second load to the Presiding Officer. I am of the opinion that the statement of this witness cannot be relied upon for he never showed any lorry or truck to the Presiding Officer at any time. He says that the Presiding Officer took no action on Ex. P14 (complaint) but it seems to me that the Presiding Officer could take no action because there were no lorries or trucks bringing voters. This witness like other witnesses says that after making the first complaint he took no other action. One further fact worthy of mention is that a photograph of this lorry is alleged to have been taken at that time, and it is Ex. P15. This photograph was taken by one Abdul Wahab photographer who was sent for to take the photograph. Now, if there was time to call the photographer and to have a photograph taken, then there was certainly time to call the Presiding Officer and show him the lorry. I have no faith in the various photographs filed in this case and I shall express my views about them later. Now if I closely examine the photograph I find no number on it. There is written 'From Budaun to Dataganj'. Some passengers are getting in and some are getting out. There is nothing to show the locality where the photograph was taken. Some oral evidence has been given to show that at least one of the persons was Buddu Jat of Nekpur who is alleged to be a worker of the respondent No. 1. There is no satisfactory evidence about it and I am unable to hold that this photograph is a genuine representation of what is alleged to have taken place at Government High School on the polling day. It is impossible to connect this photograph with this election without accepting the oral testimony of doubtful witnesses. My observation is the same regarding the other photograph of a car No. UPO-68 which is Ex. P16.

I wish to add that the photograph Ex. P15 was taken at about 10 A.M. It was within a short time of that that truck U.P.M. 1477 brought its first load at 10.30 A.M. but the photograph of this truck was not taken at the Govt. High School when the photographer was in all probability there.

I shall deal at this stage with the complaint made by Miss Maimoona Begam. She is alleged to have made a complaint at the Government High School polling station. This complaint came into existence in this way. It is alleged that Sri Faqre Alam P.W. 129 who was polling agent of Sri Nihaluddin at the Normal School goes to the High School and finds this lorry No. 139 bringing respondent's voters to that polling station. This gentleman asks Miss Maimoona Begam to write out a complaint and give it to the Presiding Officer and that is done. Miss Maimoona Begam has not been produced in this case and we have to rely on the statement of Sri Faqre Alam and the paper which is alleged to be her complaint Ex. P28. As I have stated above I am unable to place reliance on the statement of Sri Faqre Alam, who has been more enthusiastic than the petitioner himself, who is alleged to have seen lorries bringing voters at the Normal High School polling station where he was polling agent himself but makes no complaint himself, who is supposed casually to visit the Govt. High School and there is alleged to have seen Bus no. 139 carrying voters and asks Miss Maimoona Begam to write the complaint Ex. P28. It is doubtful whether Miss Maimoona Begam herself saw the lorry 139 being used and her prayer is that a note may be taken by the Presiding Officer. No one shows the lorry to the Presiding Officer. I am unable to accept this kind of evidence as proof of the fact that lorries were used to carry voters by respondent No. 1. If the statements of the petitioner's witnesses are to be believed there should have been hundreds of complaints because lorries were plying carrying voters from the very morning till evening in about 14 polling stations including polling stations in the city and in the villages. All the Presiding Officers or their polling officials who are examined in this case definitely say that they did not see any lorries or any motor vehicles bringing voters to the polling stations and I cannot discard all this definite official evidence and accept the oral testimony of witnesses who in my opinion are not independent or men of substance. I would, therefore, hold that the petitioner has failed to prove that respondent No. 1 used motor vehicles to carry voters to the various polling stations on the polling day. I am definitely of the opinion that the entire evidence of the petitioner is fabricated and false and should not be accepted.

I wish now to say something about the photographs produced in this case. It is said that these photographs were taken on 3rd of May, on the polling day. There is no documentary evidence to show that these photographs were taken on 3rd of May. The entire case is based on oral evidence. Documentary evidence was, however, possible and that would have clinched matters but all documentary evidence has been withheld and in my opinion, deliberately, because

if these documents had been produced they would have shown that these photographs were not taken on 3rd of May. I wish particularly to refer to the diary of the petitioner. He says 'in my diary I had made notes of the events of the polling day also'; he says further "I did not consider it necessary to produce that diary". Now if the diary had been produced it would have shown that on 3rd of May photographs were taken of these vehicles and lorries bringing voters. Then the petitioner paid for these photographs and obtained receipt from the photographer. That receipt would have borne the date and would have shown that it was issued soon after 3rd of May. The other documentary evidence is the order book and the Account Book of the photographer. These, if produced, would have also shown that the photograph was taken on the third of May. All these were within the control of the petitioner and in my opinion should have been produced. I would not, therefore, rely on this parade of the oral evidence when the documentary evidence has been withheld. It was for the petitioner to prove conclusively by the best evidence possible the actual date when these photographs were taken. He has withheld the best evidence. It was not for the respondent to guess and allege that these photographs might have been taken at some other time. He has guessed and tried to prove that at least one of these photographs was taken during the Municipal elections which took place in October, 1953. He has produced a witness to prove this fact. This witness is Sri Keshav Charan Gupta Vakil of Budaun. He said in his statement that he was a candidate for Chairmanship. He was once a zamindar paying about Rs. 6,000/- a year as land revenue. He was a member of the Budaun Municipal Board upto 3rd of November, 1954. The Budaun Municipal election took place on 26th October, 1953 and polling station of his ward was Normal School. He says that on that date he was at the Normal School polling station and saw voters coming in a motor truck. The truck had some Punjabi women and children and this truck was standing on the road on the south of the Normal School at about 4 p.m. that day. He says it was photographed in his presence by a Muslim photographer of Budaun. This witness wanted to say that photograph of the truck Ex.P3 was the same photograph but this Tribunal by majority did not allow him to see that photograph Ex.P3. I was of the opinion that this photograph should have been shown to him and if it had been shown he could have proved that the photograph of this truck Ex. P3 was taken near the Normal School on 26th October, 1953. However, the matter stands there and I shall not discuss it further. A look at photograph Ex.P3 shows that a large number of people were getting down from a high truck. It would take considerable time for these women and children to get down. It was very easy to show the truck to the Presiding Officer because there was ample time for it but it was not done. I do not believe at all that these photographs were taken on 3rd of May as alleged by the petitioner. This Ex.P3 is proved by P.W.80 Krishna Lal. This witness says that Sri Raja Ram Shastri was at the polling station to watch the interest of the Congress and it is well known that Sri Raja Ram Shastri is not a Congress worker. The six photographs which have been produced in this case are alleged to have come into existence on 3rd of May, 1953. Issues in this case were framed on 21st November, 1953 and various dates were fixed for filing the documentary evidence by the parties but these vital documents were not produced till 25th February, 1954. The delay in the filing of these photographs creates a suspicion in my mind. I would not, therefore, accept these photographs as genuine.

I, therefore, hold that the respondent No. 1 is not guilty of the major corrupt practice described in Section 183(6) of the Representation of the People Act.

*Issue No. 12.*—Allegations have been made in para. 4(f) and list (f) that respondent No. 1 took assistance from six Mukhias for the furtherance of the prospects of his election. I shall deal only with Rai Singh Mukhia of Yusufnagar as my learned colleagues have held that the respondent No. 1 took assistance in his election from this Rai Singh only. As regards Rai Singh, he is no doubt; a Mukhia or village headman of Yusufnagar. The petitioner has produced 22 witnesses to prove that the respondent No. 1 took assistance from this Mukhia. The petitioner has produced the polling agency form alleged to have been signed by Rai Singh. The respondent denies that Rai Singh worked as his polling agent. He says that he signed the polling agency form but he cannot recognize the signature of Rai Singh on that form. He further says that he does not even know Rai Singh and that Rai Singh did not actually work for him even as polling agent. Merely acting as polling agent would not have harmed the respondent but the petitioner has produced a large number of witnesses, to be accurate, 22 in number who say that Rai Singh did canvassing and propaganda for respondent No. 1. The learned counsel for the respondent analysed the evidence of these 22 witnesses and they argued that 13 witnesses out of them

say only that Rai Singh did propaganda. They do not say that this Rai Singh was a Mukhia. Only two witnesses say that Rai Singh was Mukhia of Yusufnagar. One is P.W.20 Deo Datt Sharma who is a Congress worker and lives at Chatpuri railway station. He says no doubt that Rai Singh, Mukhia of Yusufnagar, came in the propaganda. This witness is a Congress worker and had done Congress propaganda in various villages. He says, however, that he did not go to Yusufnagar. It is doubtful whether this man knows Rai Singh personally or had been told by some body that one propagandist was Rai Singh. P.W. 11 Sukkha Singh of Raipura has also stated the name of Rai Singh as Mukhia of Yusufnagar. It is doubtful whether he knows Rai Singh Mukhia of Yusufnagar personally or had only heard the name. He is said to be the sympathiser of the Congress. Another witness P.W.5 Raghubir Singh p/o. Nausana says that among the men who came in the lorry for propaganda was one Rai Singh Mukhia; he does not say of what place. P.W.10 Parshadi in his statement says that persons who came to do propaganda for respondent No. 1 included Rai Singh of Singraura. This cannot be Rai Singh Mukhia of Yusufnagar. It seems that these various witnesses who have mentioned the name of Rai Singh as one of the propagandists do not know him personally and they have stated what they were told to state and, therefore, all this discrepancy. I would like to mention about a witness P.W.24 Natthu Singh. He is a resident of Yusufnagar, the place where Rai Singh lives. He stated that there was election propaganda on behalf of respondent No. 1 in his village. He saw this propaganda three times and it is surprising that he does not mention the name of Rai Singh Mukhia of his village as one of the propagandists. I have, therefore, great hesitation in accepting the statement of only two witnesses out of 82 who really fixed the identity of Rai Singh Mukhia of Yusufnagar. I am reluctant to hold on this evidence that respondent No. 1 obtained any assistance for the furtherance of the prospects in the election from Rai Singh Mukhia of Yusufnagar and I hold that respondent No. 1 is not guilty of the major corrupt practice as contemplated under Section 123(8) of the Representation of the People Act.

*Dated the 29th July, 1955.*

A. SANYAL,  
Advocate Member.

#### ORDER BY THE TRIBUNAL

There is a difference of opinion among the members of the Tribunal as indicated above. The Chairman and the Judicial Member are of the opinion that in this case the three corrupt practices defined in Section 123(6) and (8) and Section 124(5) of the Representation of the People Act, 1951 are proved to have been committed on behalf of the respondent No. 1 in the election, and no other corrupt or illegal practices and no irregularities materially affecting the result of the election are proved to have been committed, whereas the Advocate Member is of the opinion that even these three corrupt practices are not proved to have been committed. In accordance with the provisions of Section 104 of the Act the opinion of the majority should prevail and, therefore, it is held that the corrupt practices of Section 123(6) and (8) and Section 124(5) are proved to have been committed in this election on behalf of the respondent No. 1 by procuring his bus no. UP0—139 for carrying voters to the Government High School polling station, Budaun, on the polling day, by obtaining the assistance of Rai Singh Mukhia of Yusufnagar for the furtherance of the prospects of the respondent No. 1's election and by a systematic appeal to Hindu electors to vote for the respondent No. 1 and refrain from voting for the petitioner and the respondent No. 2 on grounds of religion, that they were committed by the agents of the respondent No. 1 with his full knowledge, consent and connivance, and that these corrupt practices materially affected the result of the election and also the respondent No. 1's election was induced by them. There are no grounds at all to condone these practices under Section 100(3) of the Act, and consequently the election of the respondent No. 1 is declared to be void. These corrupt practices entail a disqualification in respect of the respondent No. 1 under Section 140 of the Act, and we do not think it necessary or proper to name any other person for disqualification. The prayer of the petitioner for a declaration that he has been duly elected is disallowed, and the parties shall pay their own costs of the case.

(Sd.) A. SANYAL, Advocate Member.

(Sd.) M. U. FARUQI, Judicial Member.

(Sd.) R. SARAN, Chairman.

## ANNEXURE A

## ORDER

The petition in this case relates to the bye-election of Budaun-North constituency of the U.P. Legislative Assembly held on May 3, 1953. As a result of counting Pt. Sri Niwas was declared elected and the petitioner who was also one of the candidates was defeated. Being dissatisfied with the result of the election Sri Mohammad Asrar Ahmad presented the petition challenging the election on various grounds. Written statement was filed by the successful candidate i.e. Pt. Sri Niwas in which he denied the charges levelled against him in the petition and raised further pleas regarding the defective verification of the petition and the lists accompanying it and also regarding the vagueness and indefiniteness of the allegations in the petition and the lists. Issues were struck on November 21, 1953 and because of the agreement of the parties the Tribunal ordered that the case would be heard in respect of some of the issues which related to the preliminary points. Those issues are Nos. 1 and 3 to 6 and are as follows:—

- (1) Whether the verification of the petition and lists A, B, C, E, H and I attached to the petition is in conformity with the requirements of Section 83 of the Representation of the Peoples Act read with order 6 Rule 15 C.P.C.? If not, with what effect?
- (2) Whether the petition does not amount to an election petition as contemplated by Section 80 of the Representation of the Peoples Act and is the petition liable to be rejected on that score?
- (3) Whether necessary particulars of alleged corrupt practice as required by Section 83 of the R.P. Act are not set-forth in the petition and is the petition, therefore, not maintainable?
- (4) Whether lists A, B, C, D, E, F, G, H and I are wanting in requisite particulars? If so, its effect?
- (5) Whether the petitioner should, in the circumstances of the present case, be allowed to furnish further and better particulars with regard to matters referred to in the said lists?

We have heard the counsel of the parties and considered the allegations of the petition in the light of objections raised in the written statement of the respondent. We proceed now to give our findings on the issues mentioned above.

*Issue 1.*—This issue relates to the question of verification of the petition and the lists A, B, C, E, H and I attached to it. We have examined the different verifications and after close examination of the same we are of opinion that none of the verifications is such as may entail rejection of the petition on that ground. All the verifications including that of the petition are in proper form as contemplated in Order VI Rule 15 of the C.P.C. However, in lists B, E, H and I the contents have been verified partly on knowledge and partly on information. This way of verification creates a little ambiguity. It is not possible to know as to which part is verified from knowledge and which is based on information. Although the ambiguity is rather technical, we think it proper that the point should be clarified by calling upon the petitioner to disclose as to which part is verified from knowledge and which is verified on information. The petitioner shall supply the necessary particulars on this point. The remaining verifications are held to be in proper form. Issue is decided accordingly.

*Issues 3 to 6.*—These issues are inter-connected. Therefore, we propose to take them up together. These issues relate to the question of ambiguity and indefiniteness of the allegations contained in the petition and in the list accompanying it. We proceed to take up this matter according to the different paragraphs of the petition. *Para 1 to 3* are admitted. Hence the same shall remain.

*Para 4 (a) and List A.*—In this paragraph or list there is no allegation that the persons named in the list having committed the corrupt practice were the agents or the workers of the Respondent or that the respondent himself was in any way responsible for commission of this corrupt practice. Perusal of this paragraph creates some doubt in the mind as to why the respondent should be fastened with this corrupt practice but a close examination of the preamble of paragraph 4 and of the first part of paragraph 5 shows that in fact the intention

of the petitioner was that he alleged the persons named in the list to be agents and workers of the respondent. It appears that by some clerical mistake the allegation was omitted from the paragraph. Other parts of paragraph 4 namely sub-para (b) to (g) contain such an allegation in clear terms. However, in order to remove this ambiguity, we think it proper that the petitioner should be called upon to clarify this point. Furthermore, words "throughout the whole constituency" used in column No. 3 at Nos. 8 and 9 of the list are too general and the petitioner is called upon to name some of the places to which his evidence shall be confined. Except what is said above, there is no other ambiguity in the allegation. Therefore, this paragraph and the list shall remain.

*Para 4 (b) and List B.*—In this paragraph if it is read without the list the only passage ambiguous is and through his agents and workers", but this ambiguity is removed after the perusal of the list in which certain persons are named and in respect of these persons it is alleged that they had committed corrupt practice given in this paragraph. Therefore, we think that the aforesaid passage need not be deleted but its retention shall not entitle the petitioner to give any other evidence in respect of this allegation beyond that which is given in list B.

*Para 4 (c) and List C.*—Words "and his agents" in the first line of the first part of this para. are vague and indefinite. Hence the same shall be taken as scored out. Rest of the paragraph and the list shall be retained.

*Para 4 (d) and List D.*—This paragraph and the attached list are very vague and indefinite. In the paragraph it is alleged that the Respondent No. 1 himself and through his agents committed the corrupt practice of personation but no agents have been named in this paragraph or in the list. In the paragraph it is stated that the petitioner has given in the list the names of as many of the personators as he has been able to ascertain. We do not find at all name of any person who may have personated for anybody else. In the list at Item No. 9 it is stated that one person was caught personating at the connivance of agents of the respondent but even the name of this person or the names of agents have not been specified. In the list we find the name of only one person Abdul Qadir as one who was personated but there is no mention as to who personated for him and at whose instance and even in case of Abdul Qadir, his place of residence and his number in the electoral roll have not been given. Consequently, we think that para. 4 (d) and List D should be deleted on the ground of vagueness and indefiniteness.

*Para. 4 (e) and List E.*—In this paragraph the words "and his agents" appear ambiguous, but when the paragraph is read along with the list it becomes clear that the aforesaid words are used for the persons named in the list. Our observations in respect of this paragraph are same as those in respect of paragraph 4 (b). Paragraph and the list are to be retained.

*Para. 4 (f) and List F.*—Are to be retained. There is nothing indefinite except that the words "and his agents and workers" occurring in the opening part of this paragraph are indefinite and, therefore, the same shall be scored out. Also in List F against Nos. 3 to 17 the place of canvassing is not given and the date of canvassing is vaguely stated as 'during election'. The petitioner shall furnish particulars of the dates and places to which his evidence shall be confined.

*Para. 4 (g) and List G.*—This relates to the leaflet which is given in Annexure II attached with List G. Words "and his agents" in the opening part of this paragraph refer to the persons named in the list. There is no ambiguity in this paragraph hence it is to be retained. As far as list is concerned the dates and places of the distribution of leaflets have not been mentioned which shall be supplied by the petitioner.

*Para. 5.*—There is no ambiguity, hence to be retained.

*Para. 6 and List H.*—There is no indefiniteness in Para. 6 except that the phrases "far exceeded expenses" and "has engaged..... by law" are indefinite. The petitioner has specified in List H the expenses alleged to have been suppressed by the respondent and his evidence shall be confined to the particulars of List H only so far as the amount of expenses is concerned. He shall specify the names and pay of such persons as are alleged to have been employed in excess of the prescribed number.



So far as List H is concerned it is slightly vague and indefinite as regards Items Nos. 3, 7 and 8 of Para. 1 of the list. The vagueness shall be removed by the petitioner by furnishing the following particulars:—

(a) About the cost of petrol it shall be mentioned as to whether the total cost was 2,000 or only the cost of Rs. 2,000 was in addition to the cost shown in the return of this account.

(b) the names of the paid workers and motor employees, the period of their employment and the rate of payment shall be specified.

**Para 7 and list I.**—This para is concerned with irregularities only and not with any corrupt or illegal practices. As such the provisions of Section 83(2) in the matter of particulars do not apply to it. However, some of the particulars are wanting in list I and we think it proper to call upon the petitioner to furnish them. They are as follows:—

- (1) In para 2 of the list the names of the workers of respondent No. 1 allowed within the prohibited distance and inside the polling station shall be furnished.
- (2) In para 3 of the list names of the persons who were allowed to cast their votes twice shall be furnished.
- (3) In para 4 of the list the number of voters who ran away without casting their votes shall be specified as also the names of some of such voters to which the petitioner's evidence shall be confined.

The result is that the portions mentioned above as definite shall be deleted and the particulars called for shall be furnished by the petitioner by 25th February 1954, when the documentary evidence of the parties shall be filed. A date of final hearing shall be fixed on the same date.

(Sd.) A. SANYAL, Advocate Member.

The 14th February, 1954.

(Sd.) R. SARAN, Chairman.

(Sd.) A. SANYAL, Advocate Member.

[No. 82/13/53/10412.]

By Order,

P. S. SUBRAMANIAN, Secy.

